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ABSTRACT

This training package represents a portion of the National Training and Development Service Urban Management Curriculum Development Project. The package is designed for use by city managers to familiarize themselves with public purchasing systems. The first manual in this package introduces the concepts to be addressed and gives an overview of the other manuals in the package. Manual Two focuses on the purchasing function and is designed for persons who buy goods for public agencies. Manual Three discusses the approval function and is designed for administrators who officially approve public purchases. The fourth manual discusses the advisory function and is concerned with the legal aspects of public purchasing. The package is designed to be used as a whole or in individual sections. (MK)

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OCT 3 - 1980

INTRODUCTORY MANUAL

Manual Number One
of
PROCUREMENT CODES, AND PRACTICES
FOR LOCAL GOVERNMENTS

Developed by

KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT

MR. RALPH ED GRAVES, COMMISSIONER

Under Contract to

THE URBAN MANAGEMENT CURRICULUM DEVELOPMENT PROJECT

THE NATIONAL TRAINING AND DEVELOPMENT SERVICE

5028 Wisconsin Avenue, N.W.

Washington, D. C. 20016

Funded by

The Office of the Assistant Secretary for Policy Development
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Package II

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

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II.I.1

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INTRODUCTORY MANUAL

NEED

The urgency and scope of the problems in public purchasing practices is captured in the personal statement of F. Trowbridge vom Baur, Chairman of the American Bar Association Coordinating Committee on a Model Procurement Code:

> In many situations the demands of modern procurement had simply outrun state and local procurement systems. Among other things, the New Federalism, with its massive grants to the state for procurement, has injected novel factors into state and local procurement, procedures which require adaptation and improved organization and structure. Overall, there are presently problems and deficiencies in state and local procurement which are resulting in enormous waste of the taxpayer's money. In some of the states, these problems and deficiencies have led to corruption and trouble.

The American Bar Association responded to this need with a project to develop a Model Procurement Code for state and local governments. A coordinating committee on the code was established with representatives from the Association's Section of Public Contract Law and the Section of Local Government Law and given responsibility for direction of the project.

Development of the code was under way in March of 1975 when the Law Encorcement Assistance Administration (LEAA) approved a two-year matching fund grant in the amount of $320,000. On June 28, 1976, LEAA approved a Supplemental Development Grant in the amount of $126,000. The LEAA grant was made on the theory that a comprehensive and modern procurement code would simultaneously reduce the opportunity for white collar crime and help eliminate the waste of taxpayers' money through inefficient procurement methods. Thomas J. Madden, LEAA General Counsel, told the American Bar Association:

> . . . a modern and effective procurment system with a strong and effective mechanism for dealing with ethics and conflicts-of-interests for public officials must be a part of any open and progressive state and local government.

At the very outset of the project, the coordinating committee received the cooperation of Governor Julian Carroll and the Commonwealth of Kentucky contributed $50,000 and became the first pilot state. As

part of the ABA activities, a Model Procurement Code Colloquia Program was conducted in four Kentucky cities during October 1975. This program provided local officials an orientation to the problems of modern procurement, a study of the preliminary code drafts, and an opportunity to compare the proposals to the present system. Following the 1976 sessions of the General Assembly, Governor Carroll issued an Executive Order directing the Executive Department for Finance and Administration to conduct a comprehensive study of the Model Procurement Code and to report its findings not later than July 1, 1977.

The success of the Kentucky Colloquia prompted Pennsylvania to stage similar sessions in three major cities. The ABA has been holding briefing sessions with local officials and state legislators in Maryland and New Mexico. Tennessee has indicated a desire to become a Pilot State and has scheduled a Colloquia on the Code. The State of California has established a Task Force to make recommendations for revisions and additional coverage of the Code and is planning two seminars on state and municipal procurement in March 1977.

A major objective of the proposed Model Procurement Code is to identify and synthesize the best elements of existing state and municipal procurement systems. The comments of active participants in the State and local procurement process are being solicited. The American Bar Association believes that the more the Code is subjected to this critical analysis, the more likely it will be that the completed code will resolve the actual problems of state and local procurement in a realistic manner. Thus, the sequence of drafting, comments, and re-drafting is considered an on-going process.

Kentucky Involvement

The Department for Local Government Training Unit became involved in the procurement improvement process when asked to assist with the Kentucky Colloquia. Comments received at that time clearly indicated a state-wide need for training in procurement codes and practices. Seeking ways to finance meeting of the state training need, Unit staff uncovered availability of National Training and Development Service Urban Management Project funds and along with them the opportunity to put Commonwealth efforts to National use.

A skeleton team was established made up of departmental employees having skills in purchasing, law, and curriculum development. The goal of this staff was to draft a proposal and, if funded, complete a training package according to the project design.

In May, 1976, the department received official funding notification, and the Kentucky Procurement Codes and Practices Training Development Project was begun.

Package Development

The project proposal called for the package to be developed in stages, calling on a variety of resources. Project staff solicited information from

local, state, and national governmental units, and then used that information to draft package materials. Those materials were then circulated for review and comment to a group of people similar to those furnishing the original information. Their review provided project staff with information of accuracy and usability of their material.

Once manuals were completed they were tested nationally to determine whether they would indeed help local government managers do their jobs better. Findings from those tests were used for final package revisions.

General Overview

The product that has emerged from all the above listed efforts is a training package that should provide you, the local government manager, with the information and directions you need to establish and maintain a public purchasing system. To better fit your needs, the package is designed so that it may be used:

a. As a totality, to increase your working knowledge of public

b. In part, to guide your thoughts as you evaluate your purchasing responsibilities within the total system

c. By chapter, to give you specific directions on performing purchasing related tasks

The decision on when and how you use the package is yours, However, before you decide, you need to be familiar with its format.

First, the package materials is divided into three manuals. Manual I, "The Purchasing Function," is designed for purchasing agents or other persons who actually buy goods for public agencies. Manual II, "The Advisory Function," is written for the attorney who counsels a purchasing agent, mayor, or city manager on legal aspects of public purchasing. Manual III, "The Approval Function," is to be used by the mayor, city manager, or other city administrator who approves public purchases.

Manuals I, II, and III are each further divided into Processes I-VI, in the following order:

Process I	Centralized Purchasing Procedures
Process II	Bid and Award Process
Process III	Public Purchasing Approval
Process IV	Inspection and Testing Procedures
Process V	Surplus Items Disposition
Process VI	Warehousing

Each manual and process begins with a set of evaluation questions related to the knowledge contained therein. Completion of each set of questions should help you determine your gaps in knowledge and understanding and therefore know those points on which you need to concentrate.

Questions are also asked throughout the manual. These are for the purpose of aiding in concentration, emphasizing important information and helping you to apply that information to your local government. Please read and answer all questions carefully as some of them will be repeated in a final set of questions at the completion of the manual.

A second set of questions is also provided at the end of each manual and process. Your responses to these should show you how effectively you are learning.

Suggested Sequence For Using Manuals

You should now be able to make the decision of whether and how to use the manuals as a total package or in parts. Ideally, you would use them at the same time that the other members of your city purchasing team take part. In this way you could informally discuss and decide upon methods of establishing and maintaining a good purchasing system. If, however, you are using it alone you may still benefit from the system and also still utilize the same local resources, other purchasing staff, attorneys, and city administrators.

The long-range goal of this package is to help you do the best possible job in public purchasing. Completion of package materials will start you toward this goal but will not guarantee your arrival. Your main concern after that point shoud be how you can personally incorporate the information learned into your everyday work experience.

As you go through the manuals, you will need to periodically reference your state statutes and local ordinances. Please make sure you have ready access to these references before you begin on any particular manual.

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P U R C H A S I N G M A N U A L

Manual Number Two
of
PROCUREMENT CODES AND PRACTICES
FOR LOCAL GOVERNMENTS

Developed by

KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT

MR. RALPH ED GRAVES, COMMISSIONER

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Package II

PURCHASING MANUAL
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PURCHASING MANUAL

PRETEST

The following questions directly relate to the information contained in the Purchasing Manual which you will be studying. Please answer each question by circling the correct answer.

You are not expected to know many of the answers at this time. It is only asked that you consider each question carefully and answer to the best of your ability.

After completing these questions, turn to page II.2.84 in the Appendix and check your answers. Items missed should point out areas on which you need to concentrate.

PURCHASING EVALUATION QUESTIONS

1. A "qualified bidder" is a bidder who:

   a. Represents a nationally advertised product
   b. Is determined by the purchaser to meet minimum set standards and is placed on the bidders list
   c. Has met the requirements of federal bidders standards
   d. Has a minimum of five years experience with the product on which he is bidding

2. There are two different views concerning government purchasing bidders list. One view is that bidders should be prequalified for the list. The other is:

   a. The purchaser decides on his own who he does and does not want on the list
   b. Any interested supplier who submits an application is automatically included on the list
   c. No real list is maintained
   d. A bidder is only put on the list after he makes a bid for a product

3. Name the steps that should be included in the prequalification of bidders: (Choose 3)

   a. Establish a standard application form
   b. Discourage unqualified bidders from applying
   c. Set forth evaluation policies in writing
   d. Insure that the evaluation policies are kept confidential
   e. Notify the supplier in writing if he has been accepted for the list

4. The process of removing bidders from the list should include which of the following steps? (Choose 3)

   a. Establishing a vendor file
   b. Documenting a bidder's performance failure
   c. Informing the bidder in writing that he will be removed from the list
   d. Informing all other bidders of the bidder who was removed

5. The usual procedure for reinstating a bidder to the list should include which one of the following?

a. The bidder submits evidence that he has cured the problem causing his removal
b. The bidder and the purchaser have a formal talk and come to a compromise
c. The bidder cannot be reinstated to the same list from which he was removed; he must be placed on a new list
d. Under no circumstances can a bidder be reinstated to any list once he has been removed

6. A major function of maintaining the bidders list is to:

a. Keep it organized into commodity codes
b. Delete bidders
c. Continually seek new sources of supply
d. All of the above

7. In some local governments, the bidders list includes only the name, address, and commodity category of each vendor. In other places, where prequalification is used, detailed questionnaires are kept on file which include which of the following pieces of information? (Choose 3)

a. Length of time successfully in business
b. Facilities for production
c. Major competitors
d. Commodity category

8. "Purchase specifications" are:

a. The technical and descriptive requirements of a product and its intended use or application
b. The communication media between a buyer and seller
c. The basis on which bids are prepared
d. All of the above
e. None of the above

9. Check which of the following steps should be included in preparing each set of specifications? (Choose 3)

a. Write each section separately
b. Consult prospective bidders
c. Keep available drawings, reference materials, and worksheets
d. Review twice all items involved

10. The most important factor in any given set of specifications is to set out:

a. The purchase deadline for the item
b. The essential characteristics of the item
c. The intended use of the item
d. The intended price of the item

Answer Questions 11-14 by choosing from the list below:

a. Design specifications
b. Qualified products list
c. Comparisons of samples
d. Performance specifications
e. Brand name specifications

11. The three basic kinds of specifications are:

a b c d e

12. The kind of specifications most preferred in public purchasing is:

a b c d e

13. The kind of specifications to use for public contracting, publications and consultative works is:

a b c d e

14. The specification to use when time and resources are limited is:

a b c d e

15. A type of specification should be chosen:

a. For its ability to communicate the desired quality level of the needed product
b. If it is the easiest alternative
c. For its efficiency
d. None of the above

16. Good sources for preparing specifications are:

a. Your state and local statute books
b. State, federal, and professional publications
c. Persons in your city knowledgeable on the particular topic to which your specifications are related
d. All of the above

17. "Standard specifications" are used when:

a. They are required by federal law
b. Items are to be used for similar purposes by one or several different using agencies
c. Items are purchased on a one-time basis
d. None of the above

18. The factors to be considered in writing and maintaining standard specifications are: (Choose 3)

a. Gathering purchase records in a central location
b. Recording the frequency and volumes of each type
c. Keeping a limit on the number of specifications that are standardized
d. Having the specifications reviewed by using agencies and industry representatives

19. The most important protector of a healthy and equitable public purchasing system is:

a. Establishing standard specifications
b. Prequalification of bidders
c. Open competitive bidding
d. Bid tabulation
e. None of the above

20. The Invitation for Bid (IFB) should contain:

a. Terms and conditions to be used by suppliers in preparing their proposals
b. Specifications
c. A cover sheet, including project identification
d. All of the above

21. When bids are solicited by dividing the bidders list into geographic regions, it is called:

a. Rotational bidding
b. Regional bidding
c. Competitive negotiation
d. None of the above

22. Written procedures of receiving bids should include: (Choose 3)

a. Requiring all bids be dated and properly identified
b. Keeping each bidder informed of all other bids received
c. Designating a secured box where all incoming bids can be placed
d. Requiring all bids be received by a preset deadline

23. The public bid opening should include:

a. Allowing all bidders plus the general public to know the nature and extent of bids received
b. Altering bids that do not conform to the purchaser's needs
c. Announcing who is awarded the contract
d. All of the above

24. In the sealed bid and award process, the purpose of evaluating bids is to:

a. Prequalify suppliers
b. Determine the lowest responsible bidder
c. Bond them
d. Determine which bidders should be deleted from the bidders list
e. None of the above

25. Bid bonding should be used:

a. On all bids
b. When openness is desired
c. When the reputation of the bidder is known to be bad
d. When the reputation of the bidder is unknown

26. The person given the authority to make the contract awards must:

a. Be certified by the state board of purchasing
b. Have a knowledge of all state and local statutes which relate to the process
c. Not know any of the bidders
d. None of the above

27. Given preferences to local bidders in evaluating bids is:

a. Argued as unconstitutional because it can be a barrier to interstate commerce
b. Promoted by local businesses and special interest groups
c. Costly
d. All of the above

28. Any bid submitted that does not conform to the specifications set out in the Invitation for Bid (IFB) should be:

a. Reprocessed
b. Rejected
c. Questioned
d. Used as standard

29. Emergency purchases should only be allowed:

a. In duplicate purchasing
b. Through permission of the central purchasing officer or someone in a higher position
c. Through permission of the seller
d. None of the above

30. Single source purchases are made:

a. When a certain seller is preferred by the purchasing agent
b. When only one department needs the item
c. When there is only one acceptable vendor able to furnish the needed item
d. All of the above

31. Competitive negotation can be used when:

a. Time is crucial factor
b. High technology items are involved
c. The purchase is for professional services
d. All of the above

32. Which of the following steps should be used in competitive negotiation? (Choose 3)

a. Preparing a list of qualified bidders
b. Calling each qualified bidder on the phone
c. Giving public notice of the intended purchase
d. Soliciting bids through a Request for Proposal (RFP)
e. Asking for sealed bids

33. "Cooperative buying" is:

a. Purchasing made from several bidders at one time
b. Several units of government getting together to purchase an item
c. A unit of government making a cooperative agreement with a seller
d. All of the above

34. In most local governments, who has final approval on all purchases?

a. The local elected or chief administrative official
b. The purchasing officer
c. The specification writer
d. None of the above

35. "Malfeasance" includes:

a. Conflicts of interest
b. Bribery
c. Kickbacks
d. All of the above

36. A conflict of interest occurs in a contract when:

a. The purchasing official and chief administrative official disagree on a certain point
b. The purchasing official and supplier disagree on a certain point
c. The personal interest of the government employee is involved
d. All of the above

37. Ignoring statutory requirements includes:

a. Making emergency purchases in non-emergency situations
b. Making many individual petty-cash purchases in place of one large competitive purchase
c. Making a purchase without going through the proper channels
d. All of the above

38. What type of items should be bought under term-contracting?

a. Items required year-around and used among all agencies
b. Items subject to disapproval
c. Items required on a seasonal basis
d. All items that are not bought under letter contracting

39. The things that should be included in a letter of complaint against a supplier are: (Choose 3)

a. Reason for complaint
b. Name of the person who made the complaint
c. Number of days allowed the supplier to comply with the requirements
d. Consequences of the supplier's nonconformance

40. The most effective method of inspecting items is to use:

a. A central inspection staff
b. A computerized testing program
c. A mechanical tester
d. Regional testing

41. Surplus items are:

a. In excess of present and near-future needs
b. Still useful and should not be labeled "scrap"
c. Both "a" and "b"
d. Neither "a" nor "b"

42. An item becomes surplus for one of three reasons: (Choose 3)

a. Its use has decreased
b. It is replaced by a newer item
c. A program is changed or discontinued
d. It falls under the standard definition of "scrap"

43. Surplus items can be identified best through:

a. The inventory process
b. Board meetings
c. The purchasing agent
d. The supplier

44. A surplus item may be disposed of by:

a. Transfer
b. Trade-in
c. Sale
d. All of the above

45. If you want to trade-in an obsolete item for a new one you should indicate such in:

a. The newspaper
b. The Invitation for Bid
c. A trade-in notice
d. The relating statute

46. In sale of surplus items, one condition that should always be made is:

a. The government provides no guarantees or warranties
b. If defects are discovered later, the sale will be made invalid
c. The buyer must be known by a member of the purchasing staff
d. Sealed bids should always be used

47. In taking inventory:

a. Always try to make a good estimate; it takes too much time to count every little item
b. Always count; do not make guesses
c. Count only big items, estimate on smaller ones
d. None of the above

48. The main function of warehousing is to receive, store, and disburse repetitive use items:

a. All at one time
b. From a central location
c. Yearly
d. According to statute

49. Storing items in one central warehouse:

a. Helps keep inventories in balance
b. Lets items be available when needed
c. Eliminates many small stockrooms
d. All of the above

50. Transactions that occur in a warehouse should be recorded:

a. Within five days
b. At the end of each day
c. As soon as each occurs
d. Before each is allowed to occur

51. Establishing a centralized purchasing authority is:

a. Placing control of all purchasing activities with one administrative unit within the local jurisdiction
b. Placing control of all purchasing activities with the state
c. Placing all surplus in a physical location central to all using agencies
d. None of the above

52. To encourage agencies to control purchasing under a centralized system, data should be kept on:

a. The budget
b. Items each using agency expects to purchase
c. Management information
d. All of the above

INTRODUCTION TO THE PURCHASING MANUAL

While a given government differs significantly in size, structure, and governing ordinances from other units of government, it like all others, needs good controls as well as effective and efficient program management. *Observing sound purchasing principles is a must for any government* despite it's size. So, although *techniques* for implementing a purchasing program can be expected to differ because of program size and other factors, *standards* of good purchasing can be applied equally to all levels of government.

The Council of State Government's study on state and local government purchasing states that "a government is well-served by public purchasing when there is centralization, openness, impartiality, and professionalism." The validity of each principle and process in this training program has been measured against these criteria. Please keep this uppermost in mind as you proceed through the purchasing manual.

Some of you may think that such a standard is fine in theory, but would be financially and/or politically impractical for your unit of government. And you might think that because of the size or structure of your organization, you should be exempt from part or all of the standard.

If the standard is broken down into individual principles, it can be seen that your using the standard as a guide for choosing purchasing methods should actually help your government save money and gain public support. *Centralizing* purchasing is financially sound because it helps avoid duplication and allows buying in quantity at lower prices. *Impartiality* also helps save, as it justifies "shopping around" for the best and cheapest supplies. *Openness* and *professionalism* brings public acceptance and support by letting the public see the government performing its duties for the public's interest. *The key thing to remember is that centralization, openess, impartiality, and professionalism in public purchasing is a standard toward which we can work and that any technique we are thinking of using ought to be looked at to see how it relates to this standard.*

Also, a local unit of government may not be prepared or may not have the resources to jump right into procurement professionalism. Such a system may and should be approached in phases; step-by-step changes are more likely to be more palatable than an abrupt turn-about.

The content of this training program is designed to let you, as a purchasing agent, select and use procedures appropriate to the needs of your position. It is up to each individual as to how he will use the information.

CHAPTER I: CENTRALIZED PURCHASING PROCEDURES

Central purchasing is basic to this package's purchasing principle. It is not only important as a service-oriented concept, but also as a management-oriented system. A purchasing program includes much more than ordering and buying goods and services. It includes planning and scheduling, bid solicitation, evaluation and award, writing of specifications, inspection and testing, and many other functions. Such a number and variety of functions would be handled best through centralization of the purchasing system.

To satisfy the centralization requirement, the authority, responsibility, and control of your purchasing activities needs to be placed with one administrative unit. In a larger unit of government, such an authority would consist of an entire purchasing staff, divided up and assigned to individual purchasing functions. In a smaller governmental unit, the central purchasing authority would be one individual handling the job on a full or part-time basis. Regardless of the size of a central purchasing authority, the point is to provide one authority with the right and duty to draft and enforce policies relating to purchasing.

The process of establishing and maintaining a central purchasing authority can be broken down into three basic functions:

1. DETERMINE OBJECTIVES, DUTIES, AND RESPONSIBILITIES

2. ESTABLISH GUIDELINES FOR UNITY WITHIN EACH DEPARTMENT OF YOUR ORGANIZATION

3. INSTITUTE GUIDELINES FOR ENCOURAGING AGENCIES TO CONTROL PURCHASING

1. DETERMINE OBJECTIVES, DUTIES, AND RESPONSIBILITIES

Since purchasing related activities overlap with various other functions of the different using agencies, *an effective purchasing program must be built on a clear statement of authority and responsibility.* Once your governmental unit has established such a statement, all processes that follow should run smoothly and efficiently.

TASK A: Determine objectives

To establish functions and delegate duties and responsibilities you must first and foremost set out the objectives of the central purchasing authority. Such objectives--your policy--can then be implemented

through rules and regulations set up by statute or by you, the purchasing authority. The objectives that make up your policy should be:

1. Maintain contact with using agencies and vendors that are doing business with your government

2. Reduce and control the cost of purchasing supplies, equipment, and services

3. Maintain open communication with the news media

4. Influence legislation that supports good principles of public purchasing

5. Organize effectively

6. Continually document and update practices

7. Communicate professional excellence to operating agency heads, other government officials, and the public

The central purchasing authority should be much more than a focal point for consolidating orders. Its responsibilities should include providing information to using agencies regarding vendor performance, commodity usage, inventory levels and specifications. Central purchasing should also be responsible for central warehousing, including stockpiling, inventory control, receiving, and inspecting. All such duties will be discussed in later chapters, but keep in mind that *central purchasing* is responsible for them.

*The objectives that you should include in your purchasing policy (listed on the previous page) are very important. List them below in your own words.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

Now check your answers with the previous page. Were you able to list at least four? If not, look them over again before moving to the next task.

TASK B: Establish external and internal organization

In establishing a central purchasing authority in your level of government, its organizational placement is important. The authority *must be able to exercise independent professional judgement* in order to deal fairly with vendors, coordinate with other government departments, provide quality service, and protect the public interest. And its placement within your government should assure that such responsibilities can be accomplished easily.

There is no one best placement for your organization; what might work well in one local government may not work well in another. The following factors, however, should have a major impact on the decision:

1. Organization and management philosophy

2. Tradition

3. Size of the purchasing program

4. Resources available

Fundamentally, *the need is to place the central purchasing authority where the number of levels between the chief purchasing official and the chief executive is lessened.* So this should be a strong consideration.

An additional consideration is that if the size and volume of your purchasing activity calls for only a single individual to handle the program, the individual needs enough authority and responsibility to achieve purchasing purposes. If, on the other hand, your government requires an entire purchasing office, establish it as a separate unit on an equal basis with other major departments. Whatever the organization, the central purchasing authority should occupy a place where it can

coordinate and deal with the other departments effectively and, at the same time, have enough power to prevent decisions based on partisan political pressures.

In establishing the internal organization of your purchasing program keep in mind that your functions should include *overall materials management, not just acquiring or purchasing them.* Your purchasing program should include acquiring items, assuring quality, disposing of items, consolidating agency needs, determining and evaluating requirements, administering contracts, as well as many other functions.

The ideal central purchasing authority consists of three major programs:

1. Acquisition program--Should encompass planning and scheduling, designing Invitations for Bids, and soliciting bids; receiving, opening and evaluating bids, and making awards; expediting; and contract administration.

2. Standards and quality assurance program--Should include standardization, specification writing, inspection, and testing.

3. Disposition program--Should include transfer of surplus property from one agency to another, and its disposal through sealed bids, auction, posted prices, site sales, or direct negotiation.

Each of these functions will be dealt with later.

TASK C: Delegate duties and responsibilities

A central purchasing authority must supervise all purchasing operations and delegate purchasing activities. The following is a list of activities that should be included in the purchasing cycle, along with the person(s) who should be responsible for it. This is an example of what would work well in a typical purchasing organization. Hopefully, it could be adapted to yours.

1. User department prepares three copies of purchase requisition, keeps one copy for file, and sends two to purchasing.

2. Purchasing checks the requisition to see if it is accurate. If not accurate, both copies are sent back to user department.

3. If accurate, purchasing checks to see if funds are available. If not available, copies are sent back to user department.

Note: Accounting, or a budget division, can also determine the availability of funds. If a budget is in use, it will be referred to in order to see if the purchase is budgeted.

4. If funds are available, purchasing keeps one copy of the requisition for file, sends one copy to accounting, and determines whether regulations require bids to be solicited.

5. If bids are not required, price quotations are obtained by phone, written inquiry, or from catalogs, and a purchase order is prepared.

6. If bids are required, bid quotations are requested.

7. Bids are received and tabulated, and the lowest and best bid is submitted to the commission or council for approval.

8. The commission or council evaluates the recommended bidder and decides whether to approve. If not approved, either (a) another bid is approved, (b) no bids are accepted and the purchase denied, or (c) purchasing is instructed to solicit bids again.

9. If bid is approved, purchasing prepares purchase order.

10. Purchasing keeps one copy of purchase order for file, and sends two copies to selected vendor, one to user department, and one to accounting.

11. Vendor supplies ordered goods or services, and submits an invoice along with one copy of purchase order, keeping the other copy for file.

12. The user department and purchasing inspect the goods to see if specifications have been met. If they have not been met, goods are sent back to the vendor, or he is otherwise directed to comply with the order.

13. If specifications are met, receiving report is prepared in triplicate by user department, one copy is kept for file, and two are sent to purchasing.

14. Purchasing verifies that receiving report and purchase order coincide, keeps one copy for file, and sends a copy to accounting.

15. Accounting verifies that purchase order, invoice, and receiving report coincide, and pays the bill.[1]

Some governments require that all orders be prepared and issued by central purchasing, while others permit the using agencies to prepare and issue orders after central purchasing awards the contract. In many governments, the purchasing authority would be overloaded with work if all acquisitions came through it, so they delegate using agencies the authority for making certain types of purchases and for waiving competitive bidding under certain circumstances (for instance, in making emergency purchases). *Delegations should be made when the activities can more logically be performed by others.* Always, in such cases, *central purchasing should establish the procedures to follow, oversee the entire process, and receive and review copies of the orders placed.* The central purchasing authority maintains overall legal responsibility for implementing the purchasing program and establishing policies, procedures, and controls.

TASK D: Anticipate potential problems and establish alternative solutions

So that your central purchasing authority runs as smoothly as possible, it is best to anticipate potential problems and know how you will deal

them from the beginning. This will let you prepare for any that might arise by having alternative solutions available.

Here is an example. If your purchasing authority has been placed in your governmental structure where it will be hard for you to have good communication with the chief executive, you can be certain that problems will arise because of that communication distance. Probably the biggest problem that will arise is a time delay for getting something approved. So that your time delay will be as short as possible, it is best to have ready several ways to handle the problem *before* it arises. Depending on your government's size and power structure, there probably are available a number of different ways to get through to the chief executive. If you research and are prepared in advance for this communication barrier, your chances of overcoming it are much greater!

Thus the task of being prepared for potential problems can be accomplished by seeking out problems that may arise, researching and developing alternative solutions for each of them.

*List a potential problem inherent to the organization of your present purchasing program. _____

_____

_____

*Can you list two alternative solutions for it?

1. _____

_____

_____

2. _____

_____

_____

TASK E: Identify legislation, regulations, or authorities which relate to central purchasing

Not only should you be able to *identify* legislation, regulations,or authorities relating to central purchasing, but as we talked about in "writing objectives," it is the purchasing authority's responsibility to *influence* legislation that supports good principles of public purchasing. Another objective that applies here is your "responsibility to communicate professional excellence to operating agency heads, other government officials, and to the public."

In other words, *it is completely your responsibility to inform your lawmakers and their advisors as to the important principles of the purchasing process.* In order to do this, *you must be familiar with present laws and regulations.*

2. ESTABLISH UNITY WITHIN EACH SEGMENT OF YOUR ORGANIZATION

In order that your purchasing program will run efficiently, each segment must know what all other segments are doing and why. Doing this will discourage overlapping and deficiencies and promote job satisfaction.

*Can you name a problem in your purchasing program which indicates lack of unity? Discuss it.

_____

_____

_____

_____

_____

_____

_____

_____

No matter what your problem may be, there are certain guidelines that can be used to deal with it and prevent others like it from arising. The following are suggestions for preventing and dealing with such problems:

1. Document the functions of each departmental unit and distribute them to all other units.

2. If it is known that a certain departmental unit is intruding on another's function, address the problem immediately by contacting the unit's supervisor. Find out why the intrusion or duplication is occurring, and if the function is really not appropriate for the said department.

3. Any change of function should be justified, documented, and distributed to both or all units involved.

Unity and coherence of action would appear to be more of a problem in larger units of government than in medium or small sized units. Still its prevention is important, regardless of the government's size.

3. INSTITUTE GUIDELINES FOR ENCOURAGING AGENCIES TO CONTORL PURCHASING

In setting out the objectives and responsibilities of the purchasing

program, it is important that all using agencies are treated fairly so that good responsiveness is received from them.

After you have set out the goals and objectives and delegated the responsibilities of your purchasing program, set out policy to encourage agencies to control purchasing. Such policy should include the following:

1. Reasons for the way you delegated duties.

2. Conditions under which exemptions or exceptions will be made.

3. Reasons for each using agency to abide by their objectives and responsibilities given them. (Here you should justify your operations, emphasizing the principles of good public purchasing.)

4. Procedures and justifications for using agencies to submit data to control purchasing.

There are several types of data that need to be monitored in order to control purchasing. The first piece of information that would be needed is a *list of items that each using agency expects to purchase.*

*Can you think of another piece of data that central purchasing should require using agencies to submit along with a list of items wanted purchased?

_____

_____

_____

Central purchasing would need *information on the quantities of each item needed, and also the time they will be needed. It would also need from using agencies budget and management information.*

Budget data (or, more simply, an annual budget submitted by a using agency) is a good source of information for forecasting needs. Though budgets can't be used to predict specific purchasing requirements, you can analyze them to get at least an indication of the general types and volumes of purchases to expect during the year.

A management information system will give you a close examination of items and quantities purchased in the past. Not all local governments have the data-processing capabilities and other resources necessary to develop an automated purchasing system, or even a manual system. A manual system can be achieved by having all bid-award documents and purchase orders filed according to major commodity code group, or at least by maintaining a cross-index by commodity. With this system, you can find the background of a particular commodity without having to go through all the files. How you use this technique will depend on such factors as the amount of purchasing activity for a particular item. For an item with a low level of activity, for instance, you could use the following example commodity card:

COMMODITY PROFILE CARD
COMMODITY X

Vendor	Award Date	Bid Award File No.	Quantity	Award Amounts	Requesting Agency
A	2/25	36437	25	$ 500	Police
B	4/4	90514	15	2,500	Fire
A	8/12	69087	50	80	Mayor's Office

FOOTNOTES

[1] Purchasing for Local Governments, Institute of Government, The University of Georgia, p. 14-15.

CHAPTER II: BID AND AWARD PROCESS

The term "bid" as used in public purchasing refers to you as the prospective buyer, seeking and/or obtaining item specifications and prices from a supplier. "Award" refers to your purchasing outright or signing a contract to purchase a commodity. The "bid and award process" then becomes your acts of looking for a product and buying it.

The total process, which includes a variety of activities, can be broken down into five basic functions:

1. ESTABLISHING AND MAINTAINING A BIDDERS LIST
2. PREPARING SPECIFICATIONS
3. INVITING, OPENING, RECEIVING, AND TABULATING BIDS
4. EVALUATING AND AWARDING BIDS
5. WORKING WITH ALTERNATIVE PROCEDURES TO THE BID AND AWARD PROCESS

1. ESTABLISHING AND MAINTAINING A BIDDERS LIST

The bidders list determines who will receive Invitations for Bids. The list sets out the names of suppliers of various goods and services as the possible sources of bids and proposals. The list also encourages competition by providing qualified suppliers to compete equally for government business. Consequently, establishing and maintaining a qualified list of bidders is an important part of the purchasing program.

The process of establishing and maintaining a list of qualified bidders includes the following tasks:

TASK A: Setting up the lists, including prequalifying bidders

TASK B: Maintaining the lists, including deleting bidders from it

TASK A: Setting up the lists, including prequalifying bidders

There are two different views concerning bidders lists.

Theory #1 Any supplier making a request to be on a list should be included.

Some purchasing statutes require that any interested supplier who submits an application giving his name, address, and the commodity in which he is interested is automatically included on the list. The rationale behind this is that prequalification is discriminatory. It is said that it inhibits competition by disqualifying new, small, and minority businesses who cannot meet financial and experience requirements.

Theory #2 Bidders should be prequalified for the list.

Some statutes provide that the bidders list include only qualified vendors. A local government under such a mandate must establish criteria for determining such qualifications.

To establish lists of qualified bidders, it is first necessary to define what a "qualified bidder" is. *A bidder is determined qualified if he meets the minimum standards set by the government for business competence, reputation, financial ability, and product quality.* In other words, in the interest of efficiency and economy, bidders lists ought to include only active bidders who are capable of performing. (And who are known to have a good reputation.)

The bidders list determines who will receive Invitations to Bid. Most local government purchasing offices use a bidders list broken down into the different types of commodities. Procedures for setting up the bidders list vary from one local government to another.

*Do your state or local laws indicate whether or not your bidders should be prequalified? Yes ____ No ____.

*Cite the state or local ordinance, if any, that indicates such.

_____

_____

If you are not required to prequalify bidders for your list, why should you choose to do it? Isn't it time-consuming and costly? Quite the contrary. To include on your bidders lists every applicant regardless of performance capability is much more impractical. Unnecessarily long lists increase the costs of soliciting bids and can lead to discriminatory practices such as soliciting bids on a rotational basis. And, denying a supplier inclusion on the bidders list from the very start is more suitable than rejecting him later as a nonresponsible low bidder--it is also more efficient! Also prequalification helps you minimize or even eliminate the need for bid bonding, since you already have looked into the supplier's financial background.

If you do choose or are required to prequalify bidders, it should be done in a way that would not reduce competition. The first and most important step is *establishing a standard application form* to insure that all applicants are treated alike. Information to be obtained through the form should include financial standing and responsibilities; facilties for production, distribution and service; length of time in business; and overall reputation.

Central purchasing should review each application submitted, verifying information supplied and comparing it to established standards. Sometimes other procedures are necessary; obtaining copies of suppliers' financial statements, visiting their places of business, or contacting their other customers. The standards by which suppliers are evaluated must be preset, specific, and pertain to each category of information requested. For example, one requirement could be that a supplier be in business successfully for one year.

Besides establishing a standard application form (Step #1) there are several other steps which should be included in the prequalification process. These are:

2. Setting forth evaluation policies in writing and making them available to any interested supplier.

3. Encouraging suppliers to apply with the understanding that they must meet minimum requirements.

4. Allowing for exceptions within the process. For instance, if a supplier is known to be competent because of past performance, he does not need to meet the prequalification requirements. Conditions for any such exception must be defined in written policy statements. If a new or small business cannot meet financial or experience requirements, an exception can also be made. In such cases, determine to what degree they meet the requirements.

5. Notifying the supplier in writing whether or not he has been accepted for the list, and if he hasn't, what he can do to qualify. He should have the right to administrative review if he feels he hasn't been treated fairly.

If you follow the above steps your prequalification program is more likely to promote fair and impartial treatment of suppliers.

Without looking back, see if you can list the five steps in the prequalification process in your own words.

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

5. _____

_____

Now check your answers with the preceding page. Did you get them right? The most important point to remember about these steps is that all policies and procedures be *written out and made available to those interested.* Remember, prequalification is important to both purchaser and supplier. It not only provides savings in administrative solicitation and bonding costs, but it also brings discipline to the process of determining supplier capability and responsibility.

TASK B: Maintaining the bidders lists, including deleting bidders

A good prequalification system is of little use if it is not combined with a well-organized bidders list to provide a fast and effective means of soliciting bidders. Most local governments use a bidders list which is categorized by type of commodity. In structuring the list, major commodity classification groupings must first be established, each representing a particular function with which a group of products is commonly associated. This classification order should not be too general or too specific, or soliciting bidders will be made difficult.

For instance, if you made one category "office machinery," it would be difficult to solicit bids from all suppliers in that category for the purchase of a copying machine. Why? Because you would be including suppliers of copying equipment, collating machinery, and even coffee-making equipment in the solicitation.

To avoid this, include breakdowns in your categories--"office machinery" should include subcategories of "copy equipment," "typing machinery," "tape recording equipment," etc. *Proper classifications are used to the degree that products and suppliers are closely matched. The extent to which major commodity codes are subdivided into item classifications will depend*

largely on the nature of the item and on responses that you get to solicitations. For instance, if at least a 50 percent response rate on a particular item is not obtained, the bidders list is probably not properly categorized.

Say you solicited bids for a memory typewriter from every supplier on the "typing machinery" list, and you only received bids back from 25 percent of them. This is a good indication that you should subdivide the "typing machinery" category into several different classifications.

Some local governments code their bidders list according to commodity, and cross-index this code with each vendor so that in soliciting bids, the purchaser can easily identify the supplier according to his respective product lines. If your local government is without a coding system, and you think you'd like to develop one, it would be best to build from a system used by a governmental unit similar to yours, rather than try to develop one completely on your own. And if you presently have an indexing system, it needs to be reviewed periodically to determine whether it is still appropriate. Some type of uniformity of commodity codes among local governments would provide for better communication and cooperation between them. Presently, however, there is really no such uniformity.

We said before that a good prequalification system is of little use if it is not coupled with a well-organized bidders list. Still, *a well-organized bidders list is of little use if it does not represent the most current, available competition.* This can be accomplished by continual canvassing to identify new sources of supply and by eliminating inactive and unsatisfactory suppliers.

Continually seeking new sources of supply must be based on an organized program, since it is such an easy function to overlook. Some of the things you can do on a regular basis are; attending trade shows, researching license bureau files, and maintaining market information files. Also read through trade magazines such as: *Thomas Register of American Manufacturers and the Chicago Buyers' Guide.* A more extensive measure is to advertise in state or national trade publications.

About once every two years, review your major commodity groups to see if the extent of competition being obtained is sufficient, and to decide what you need to do to expand your supplier base.

The more delicate side of maintaining a bidders list is the deletion of bidders whose responsiveness and performance is not up to par. To carry out this process, the following tasks must be accomplished:

A. *Establish criteria for deleting a bidder from the list.* Many local government purchasing agents remove a supplier from the bidders list after three consecutive failures to bid. Matters such as; failure to meet delivery dates, failure to meet specifications, failure to keep promises, inadequate substitutes, and deficient material are also justifications for deletion.

B. *Establish a vendor file* (in central purchasing) to collect information for periodic reviews of bidders responsiveness, performance, and capabilities.

C. *Establish procedures for notice to bidders, reinstatement, period of suspension, and right of administrative review (See below).*

Require that any suppliers' performance failure should be documented and sent to central purchasing. These may need to be acted on immediately or filed for future reference.

Review and investigate all reasons and evidence and make the final decision, when it is determined that a bidder should be removed for cause. (For example, unsatisfactory performance, or violation of standards.)

When removal is based on failure to bid, it should be confined to that particular item or items.

When removal is justified, the supplier should be informed in writing.

Completely document the reasons for action, any contracts made, and a record of the review and approval (this can also be kept in the vendor file).

Reinstate a bidder upon receipt of a new application, if he has been removed for three consecutive failures to bid. If he has been removed for cause, he should be suspended for a period of one year, after which he may reapply. For his application to be reconsidered, he must give evidence that he has cured the problem causing his removal. Be sure to check state and local ordinances on this matter.

Allow for administrative review if you choose or if you are required to do so. Some local governments allow for administrative review of deletion and in some cases the suspension is automatic. Check state and local ordinances on this.

Do you know the tasks required in deleting bidders from the bidders lists? Better yet, do you know how to maintain or what should be included in a bidders list? Let's have a try at the more general questions.

*What kind of data should be included in a bidders list?

Your answer could be one of several, depending on your local ordinances. In some local governments, the bidders list includes only the name, the address, and the commodity category of each vendor. In other cases, where prequalification is used, detailed questionnaires are kept on file. The information collected on these questionnaires includes financial standing and responsibility, facilities for production, distribution and service, and length of time successfully in business. A commodity code, if your government uses one, will also be included on the list.

2. Preparing Specifications

"Specifications" is defined as the technical and descriptive requirements of a product and its intended use or application. It does not contain the terms, conditions, or other contractual matters included in an Invitation for Bid. Specifications are the communication media between buyer and seller and the basis on which bids are prepared.

With reference to the standard stated in the introduction, ask yourself the following question:

*What activities should be included in specification preparation to insure impartiality? Try to name at least one activity. _____

_____

Insuring impartiality is perhaps the most important principle in the construction of good specifications, and almost any task related to specification preparation would be a correct answer. But let's look at all tasks needed in the process:

TASK A: Establish a central control over specifications

TASK B: For each set of specifications prepared, choose one of the three types: design, performance, or brand name

TASK C: Refer to aids and legal guidelines on specifications preparation

TASK D: Write specifications, setting out the essential characteristics of an item to be purchased

TASK E: For each set of specifications, describe the nature and methods of testing to be used

TASK F: Establish standard specifications for frequently purchased items

TASK A: Establish a central control over specifications

Again, you may think that such centralization is not financially practical and maybe even impossible for your unit of government. Yet if individual units within your government do any amount of bid specifications they must make them consistent, accountable, and enforceable. Although using agencies may initiate descriptions of needed items, there must be a central body to assure that the final specifications are not too restrictive or do not call for a higher quality level than is needed. Central control is also necessary to avoid inconsistencies and duplications within individual agencies.

*Do you think a central authority for the preparation of specifications would be appropriate for your unit of government? Yes ____ No ____
For what reasons? _____

_____

_____

*Does your unit of government presently have such a central authority? Yes ____ No ____

If not, how would you go about establishing one? _____

_____

_____

_____

Setting up such an authority is not difficult. But because there is potential for disagreement and conflict, *the complete chain of authority must be set forth in writing, citing the responsibilities of both central purchasing and the using agencies.* Each using agency, for instance, should have the responsibility for determining the items it needs, while central purchasing's responsibilities should include checking the correctness, competitiveness, and suitability of specifications. (This will be covered in more detail in Task D "Writing specifications.") Cooperation between purchasing and using agencies concerning effectivenss and suitability of specifications is necessary. Such cooperation should be insured by the central purchasing authority.

TASK B: For each set of specifications prepared, choose one of the three types: design, performance, or brand name

Each of these types of specifications differs in concepts, uses, and limitations and should be used only when it is most beneficial to the circumstances.

A *brand name specification* cites a brand name, a model number, or some other designation that identifies a specific product of a manufacturer as an example of the quality level desired. Any item equal to or surpassing that quality level is acceptable.

Brand name specifications are not usually considered good specifications, but can be justified when time and resources are limited. They are efficient, concise, and especially useful when an item of low dollar value is to be purchased.

Brand name specifications should indicate beyond any doubt that the brand name mentioned is not the preferred product, but only the example product. Statutes requiring public bidding usually require that brand name specifications must state that the brand name "or equal" product is acceptable. Sometimes using several brand names will provide better results.

Again, however, the use of brand names should be as limited as possible. Though they are quick and easy to use, they tend to discourage competition and reduce chances for equal opportunity for bidders.

Design specifications detail the characteristics that the item to be purchased must possess, even so far as to describing how the product should be manufactured.

*Can you think of a type of product for which you would use design specifications? _____

_____

Design specifications are used most often in government purchasing for products designed by the using agency itself. If you put down that they are used for public contracting (roads, buildings, etc.), publications, consultant services, or for anything that requires *prescribed design features*, you are correct!

Good design specifications cannot be written for many items because the full detail required is often too restrictive for obtaining the actual performance needed, and discourages full competition for the item's purchase.

Performance specifications are those most preferred in public purchasing today. These specifications describe the capabilities necessary to satisfy intended use of the product. And since setting out these performance requirements is the priority consideration, these specifications are undoubtedly the most efficient for the greatest number of purchases.

Performance specifications provide you as the purchaser with a direct method of determining the "lowest responsible bid," without taking the chance of disqualifying any bid that is actually qualified. This is made possible through your evaluation of bids on a price/performance basis. Being able to determine value in terms of price as it relates to performance will insure you that the best and most advantageous bid will be submitted.

A disadvantage in the use of performance specifications is the cost required in developing and maintaining extensive records on each bid. This includes conducting a considerable amount of research for their preparation, using a variety of resources. For instance, to determine the performance needed and that which is available for the purchase of a memory typewriter, research should be conducted to determine alternative performance features. You should ask such questions as: "Is there a need for a magnetic-card typewriter or is the storage capacity on a memory typewriter sufficient?" "Can I buy a memory typewriter that will also be capable of typesetting (justifying margins)?" In order to answer these questions you must research the field of typewriters, especially memory typewriters. Typewriter catalogues of all major manufacturers should be reviewed for their products' performance capabilities. All information should be documented and, in most instances, saved for future reference.

Another problem that arises here is that even though you and the using agency will be working closely in determining the specifications of the needed purchase, it is sometimes quite difficult to isolate and define the performance factors of a particular product and incorporate them into an overall cost computation. Only experience can help you out in this area. Now see if you can answer the following question:

*What are three main functions in writing a set of *performance* specifications? _____

_____

_____

The three basic steps in writing performance specifications are:

1. Consulting with the using agency on the specifications needed

2. Researching alternative performance features of the product

3. Setting out the performance requirements the product is to meet

Now that we have reviewed the three basic types of specifications, you can see that each specification type has its advantages and limitations. No one type of specification is best for all products, but each is good for some. Some products require a combination of specification types, for instance design combined with performance, to result in the most fair and efficient purchase.

There are other types of specifications besides these three basic types. These others include qualified products lists, comparisons of special samples and designation for a special use. These specifications are used under special circumstances and often for very small purchases. It varies from one unit of government to another which types of these specifications, if any, are legally allowed.

*Can you name a type of specification, other than one of the three main kinds, that is fairly popular in your unit of government?

_____

_____

*For what kinds of purchases do you use this type of specification?

_____

_____

Now see if you can identify the uses of the three main types of specifications?

*Place *design*, *performance*, *brand name*, or a combination of two of them next to each of the following items as the type of specification to be used in its purchase:

New municipal building _____

Copying machine _____

Gasoline _____

Highway _____

Photographic equipment _____

Air compressor _____

Here are the suggested answers. Read through them and see if yours were similar.

New municipal building--*design* specifications would enable you as the purchaser to help detail the characteristics of the new building from the outset.

Copying machine--*brand name* such as "Xerox 4200" or "IBM Copier 2" would probably be used for this purchase.

Gasoline--*performance* specifications would be most appropriate for purchase of gasoline, since usually its only requirement is its ability to perform.

Highway--*design* specifications would be used for this since the structure would be designed essentially by you.

Photographic equipment--a *brand name* would probably be the best qualifier for the type of camera or parts that the purchaser needs in this case. *Performance* specifications would also be appropriate.

Air compressor--a combination *design and performance* specification would be most appropriate.

Did you get at least half of them correct? If not, reread the section once again, beginning with Task B. If you did get at least half of them correct, you are progressing well. Now that you know the three basic types of specifications and each type's advantages and limitations, hopefully you should be able to apply them appropriately to your own purchasing system. Because of frustrations in specification writing, there is a tendency to choose the easiest alternative in a given situation. This does not work! *A type of specification should be chosen for its ability to communicate the desired quality level of the needed product.*

Let's see if you're concentrating well. Can you state what was just said in your own words?

A type of specification should be chosen. . .(for what reason)....

_____

Could you do it? Check your answer with the preceding page. If you were fairly close, that's great. You've now mastered the use of the three basic types of specifications. Let's move on to the next task.

TASK C: Refer to aids and legal guidelines on specifications prepared.

Each unit of local government should have a person or persons in charge of advising both you as the purchasing officer and the person who has final approval on purchases within your organization (whether it be the county judge, the city manager, the mayor, or someone else) on the responsibilities and limitations of each function of the purchasing process. Such an advisory person should have a working knowledge of the legal system and good liaison with the local government for which he is working. He can be the county or city attorney, or in a larger government, legal counsel to the administration.

Whatever his position, it is important that you have a direct line of communication with him. There are, for instance, so many legal questions, that arise in the preparation of specifications that should not be left unanswered. If you are able to easily contact a legal advisory person on the individual questions that arise, your work will flow much more smoothly, and the complete specification process will be much more efficient.

It is also important that you as the purchasing agent have a familiarity with all state and local laws that apply to the purchasing process. See if you can answer the following questions on legal mandates that affect your government's purchasing:

Does your state have many statutory mandates on local government purchasing? Yes ____ No ____. If yes, do you know about how many? Are you able to reference these state statutes on local government purchasing? Yes ____ No ____

Go right now to your state statute books and see how many statutes you can locate on local government purchasing. Identify and describe three of them below.

Statute _____

Description _____

Statute _____

Description _____

Statute _____

Description _____

Now refer to your local ordinance books (if your government has them) and locate at least two ordinances that apply to specification preparation. Identify and describe them below.

Ordinance _____

Description _____

Ordinance _____

Description _____

If the ordinances in your government are not classified (or in any type of order) do you know the approximate amount of ordinances that refer to purchasing, particularly specification preparation? See if you can describe one or two in the spaces above.

Hopefully, by completing the above exercise you've discovered how easily state and local ordinances relating to the local purchasing process can be located. If you did not have an easy time with the exercise, then it at least has shown you how dependent you must be on your legal advisory persons! *Ideally, you as the purchasing agent should always be able to locate statutes and ordinances you need, but in any case you should be able to rely on your legal advisory person for questions or interpretations of them.*

Besides knowing where to locate the legal guidelines that apply to specification preparation, you should also be aware of any other available technical information that will help you in their preparation. Even if you work in a small government that does not have a specification writer, it is still not difficult to find available governmental resources and be able to establish good specifications. Probably the best source of expertise is the person or persons knowledgeable on the particular topic to which your specifications are related. Personnel from a hospital, for instance, probably would be helpful in writing specifications for ambulance purchases.

Another good source is state, federal, and professional publications that print standards or specifications from other state and local governments. Such sources include: Index of Federal Specifications and Standards, Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402; National Purchasing Institute, Inc., P.O. Box 20549, 4189 Bellaire Blvd., Suite 209, Houston, Texas, 77025; National Institute of Governmental Purchasing, Inc., 1001 Connecticut Avenue, Washington, D. C. 20036; Construction Specifications Institute, Inc., 1717 Massachusetts Avenue, N. W., Washington, D. C. 20036.

Also, other state and local governments are usually willing to send out information directly upon request. Such information could be adapted for use by your government.

TASK D: Write specifications, setting out the essential characteristics of an item to be purchased

After you have chosen the type of specification you wish to use and have done specific and general research on the item, you are ready to begin actually "writing" the specifications. The best method for this is to work from a master specification, cutting and pasting drafts of individual specifications on to it. Regardless of the method of composition, the following steps should be taken in preparing each set of specifications:

1. Write each set of specifications separately

2. Write each section separately

3. Keep readily available drawings, reference materials, and a worksheet for each section

4. Review all items involved (including drawings) twice, cross-referencing them with your reference materials

As was described in Task B, specifications should be written in such a way as to communicate the desired quality level of the needed product. No matter what type of specification you choose to use, *the essential characteristics of the item to be purchased must be included.* This is to insure that all bidders know exactly what the government wants to buy and can compute their bids. If an essential requirement is left out of a specification, it is possible that the award will be made to a bidder who actually cannot meet the government's need. It may be much later before it's discovered that the product purchased is not suitable for its intended use.

Some governments have one certain individual assigned to write all specifications. The responsibilities of such a specification writer should include the preliminary procedures of specification writing, as well as the writing, layout, and reproduction of the final product. If your governmental unit does not have a specification writer, at times it will be necessary for a consultant or an expert outside your agency to advise you on the technical details of specification writing.

*Go now to Appendix 1 (page II.2.62) and look over the sample set of specifications for "Toilet Tissue."

Setting out the essential characteristics of an item insures a proper quality level, or the *product's suitability for its intended use.* Leaving out essential requirements is risky, but requiring unnecessary features can really be wasteful. For instance, in ordering memory typewriters, if several magnetic card typewriters are ordered for an office which really only needs the storage capacity of the regular memory typewriter, then money is wasted not only on the initial purchase of the machines, but also in maintaining them and in training personnel to use them.

Requiring such unnecessary features cannot only cause waste, but also hinder competition on the item when it is let to bid. When the

specifications are more restrictive than necessary, they also eliminate from competition those items that actually would have been satisfactory and available at less cost. This means that impartiality is compromised and unsuccessful bidders would have grounds for protest.

To insure that the specifications you write are neither overspecified nor underspecified, test them in several ways:

1. Go through each individual specification of the intended purchase, justifying its need.

2. Review them with the person in the using agency wishing to make the purchase.

3. Review them with persons who are very familiar with the item's use or with sources describing their use.

TASK E: For each set of specifications, describe the nature and methods of testing to be used

Inspection and testing procedures will be talked about in a later section, but it is important that you are aware at this point that testing procedures should be included in the specifications. This is to make sure the bidder knows what type of testing he must undergo from the outset. Including the testing process in the preparation of specifications should not be any problem since the two processes, though usually separate within the organization, have a similar basic concern--*quality assurance*. This similar concern has a tendency to mesh the objectives of both processes, allowing for easy synthesis between them. This will be covered in more detail in the section on inspection and testing.

TASK F: Establish standard specifications for frequently purchased items.

A standard specification is established for use on all purchases of one particular item.

*Before we go any further, can you say for what types of purchases standard specifications are most often used?

Types of purchases that... _____

_____

Standard specifications are most often used for *items purchased on a recurring basis to be used for similar purposes by one or several different using agencies.* The initial requirement for this process is, of course, a central purchasing authority, where purchase records for each item can be gathered and reviewed. To decide which items are suitable for standard specifications, central purchasing must know the frequency and volume of each item's purchase. You are the person most often chosen to make this decision.

But it's not hard. The clerical unit of a central authority should receive all purchase requisitions and log them in for control purposes. If your purchasing program has a commodity code, the code number and the quantity requisitioned should be recorded with the item, so that you can easily add up the number of such items purchased in a given period. Any items that are ordered on a recurring basis in great volume (or representing high dollar expenditure) would probably be good items for which to write standard specifications. Standardization should begin with those items where the greatest savings can be expected due to less work and lower prices (as a result of items being bought at volume rates).

When writing standard specifications, it is sometimes necessary to incorporate small changes in the standard. Such changes must be made in a manner that will not inhibit the use of the item for any of the agencies. If you wish, you may check with the using agencies to see if the proposed standard complies with their use of the item. Remember, though, that central purchasing still must have final approval on standard specifications as well as other specifications so do not hesitate to eliminate any unnecessary frills that using agencies may request.

In some cases, industry representatives may be contacted for review of standard specifications. They can not only point out the problems that their own companies would have with the proposed specifications but also identify any technical difficulties, including inefficiencies, the specifications may have.

Probably the method for getting the most objective reviews from both using agency and industry representatives is by holding a meeting on item specification or total specifications development. Getting ideas from all using agencies at one time and/or all industrial representatives together will insure the most partisan solutions to your problems. Despite your method for securing ideas, however, representatives who are consulted should be those with the knowledge and experience necessary to the required input. For instance, a company's engineer rather than its sales manager may be contacted for help on a technical point. And any using agency or industry representative who is asked to review final standard specifications should actually be involved in their development from the outset.

When a standard specification is finalized, it should be indexed and filed for easy access. If you do have a commodity code, maintain a booklet on which commodity code numbers have standard specifications, approved brand lists, qualified products lists, or a term contract established for them. This could be circulated among requisitioning personnel to inform them which items have standard specifications, which items are on contract, and perhaps which items they could order directly from the contractor.

For the first two or three years that standard specifications are used, *periodic reviews that incorporate the comments of using agencies should be made.* After that, changes in specifications may be limited to the ones indicated by the using agencies as unsatisfactory, and by industries as outdated. An older standard specification should also be given a routine review just in case necessary changes are otherwise overlooked. All reviewed specifications should be noted on the file copy with the date and initials of the reviewer and, if changes are made, the amended or new specification should be included.

Many large jurisdictions create specification committees to review standard specifications and/or advise the purchasing agent. Such committees are usually composed of personnel from centralized purchasing and the constituent agencies.

To make the processes of writing, filing, reviewing, and updating specifications much easier, *all standard specifications should follow the same format.* This also makes it easier for any outside company who deals with several of your government's standard specifications. If you do use a consistent format, be sure to make it clear, simple, and applicable to any specification.

*Now see if you can list some of the steps we've just been through. What are the factors to be considered in writing and maintaining standard specifications?

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

The main factors to consider are:

1. Gathering purchase records in a central location

2. Recording the frequency and volume of each type of purchase to determine which ones should be standardized

3. Writing the standard specifications according to a consistent format

4. Having them reviewed by using agencies and industry representatives

5. Filing them for easy access

6. Periodically updating them

How did you do? If you didn't get at least four correct, go back and reread the section, beginning with Task F.

Now you have completed the section on specification preparation and no doubt realize the importance of their use. The use of specifications meet all four criteria in the standard on which this package is based. *Centralization* is inherent to the use of specifications and *impartiality* is an assured consequence. Since specifications are public records, they also serve to keep the purchasing process *open. But most importantly, the use of specifications gives you a better chance of receiving the most value for each dollar spent and minimizes the chances that purchases will be unsuitable in type or quality.* This is an indication that *professionalism* is being applied.

*Now see if you can list the six tasks relating to specification preparation.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

Refer back to page II.2.20 for the correct answers.

3. INVITING, OPENING, RECEIVING, AND TABULATING BIDS

Statutes and regulations generally require local governments to conduct their purchasing operations on the basis of open competitive bidding. This is to insure sound value, to guard against favoritism at

public expense, and to safeguard the interest of the seller. *Open competitive bidding is the most important protector of a healthy and equitable public purchasing system.* That is why state and local laws require that every purchase over a certain dollar amount to be subject to competitive bidding. Inviting, opening, receiving, and tabulating bids is the basis on which healthy competition is judged. And though there are other means of awarding contracts to a supplier, the sealed bid and award process is generally the best and will be discussed first. The tasks it includes are:

TASK A: Insuring competition

TASK B: Establishing bid opening and tabulation procedures

TASK A: Insuring competition

Competition can be defined as the process in which two or more vendors try to secure the business of a third party by offering the most favorable price, quality, and service. Because competition is so critical to public purchasing, the requirements of all purchasing statutes relating to acquisition should be anchored on competition principles. The *management aspect* of competitive bidding also plays an important role in assuring that open competition is maintained throughout the purchasing process. This is done in three steps:

1. *Providing a legal notice.* Most laws require that all purchases exceeding a certain dollar amount be "advertised" in a newspaper with wide circulation; sometimes a designated official newspaper in, for instance, a county seat. Advertising is required when the purchase exceeds the dollar amounts requiring a formal invitation for bids. If the newspaper advertisement is not required, usually some other form of public notice is.

2. *Soliciting bids in a manner that offers qualified suppliers an opportunity to compete.* The general rule here is that bids should be solicited from all bidders on a particular commodity list with enough qualified suppliers solicited to assure adequate competition. Sometimes soliciting two bidders is enough, if you are certain both will respond. Though the general rule is to solicit all bidders on a list, there are other acceptable processes. When there are too many bidders on a list, *rotational bidding* is sometimes used--bidders are selected on a rotational basis, each bidder getting a turn over a period of time. In such cases, the bidders list is usually too broadly categorized and should be updated. *Regional bidding* is used when deliveries have to be made to widely scattered points or the requirement is of a local nature; then the bidders list is divided into geographic regions according to need.

3. *Setting out the Invitation for Bids (IFB). The IFB should contain the terms, conditions, and specifications to be used by suppliers in preparing their proposals.* The construction of the IFB is critical to completion, because the entire tone of the transaction and the future course of any resulting contract are cast in it. Sufficient time must be devoted to the preparation of the IFB or competition may be restricted and the transaction may be subject to legal and procedural problems. The following is a list of the terms and conditions to be included in the IFB:

1. Cover sheet, including project identification

2. Specifications

3. Types of bids required (lump-sum, itemized unit, etc.)

4. Time and place where bids will be received and opened

5. Special conditions

6. Conditions under which proposals will be accepted or rejected

The above list of six items is only suggested to be used for an IFB; it can, for instance, be used as a checklist when reviewing the IFBs, so that you know what is missing and why. Other information, such as types of inspection and testing to be used, evaluation criteria, and delivery dates can also be included in the IFB. A sample IFB is in Appendix 2 (page II.65). Refer back to it now, going through each separate item to make sure you understand it.

*On the following page is an IFB worksheet arranged in a similar manner to the one printed in the appendix. Referring to the appendix, fill in the IFB worksheet as if you were buying one of the following items for your governmental unit:

1. Police uniforms

2. Fire truck

3. City building

PCPLG

INVITATION TO BID
Project #2139

Date Issued: _____

Bid opening date:

Time:

Location:

Sealed bids must be received by this date:

You are invited to bid on the following:

Terms and conditions:

1. Bids must be mailed or delivered to the Board of Commissioners, _____

_____

2. Bids must be submitted in ink or on a typewriter and signed in ink; they must be presented in a sealed envelope with the Bid number and Date of opening written in the lower left-hand corner.

3. Any company failing to respond to two consecutive invitations or four courtesy responses may, at the discretion of the Board, be dropped from the bid list.

4. All proposals must be on a _____ basis. Please quote your single best net price. Bids must be _____.

5. Delivery date is _____.

6. Bid bond in the amount of _____ percent of the proposal must accompany each proposal.

7. Any product delivered that does not meet specifications as approved by the Board, or does not produce the effect required, shall be returned at the company's expense. And the company shall refund to the city any money which has been paid them for the product.

8. The Board of Commissioners reserves the right to accept or reject any bid according to the best interests of Jonesville. A bid may be awarded in part or whole according to the best interests of Jonesville.

TASK B: Establishing bid opening and tabulation procedures

The Central purchasing authority must establish formal procedures to safeguard all bids until the time set for opening them. Public bid openings are the rule for sealed bids and records should be kept on all bids received. It is assumed that each bidder submits his bid without knowledge of competitors' bids and relys on the purchaser to assure that his price is not prematurely disclosed.

Local governments can seldom afford the luxury of having their own bid-handling staff. Usually bids come to you as the purchasing agent who is responsible for their safeguard, their opening, and their tabulation.

*What do you think is an important criterion in the receipt and control of bids? _____

_____

_____

If you said that the responsibilities and procedures of receipt and control should be set forth in writing, you are very observant. There are many other answers to the question, too, but that one would probably be the best.

Written procedures should require that all bids be dated, time stamped, properly identified, and then placed in the slot of a designated and secured box. Proper identification includes the bidder's name (or identification number), solicitation number, and the opening date.

The *public bid opening* is to allow both bidders and the general public to know the nature and extent of competition obtained in response to solicitation of bids. The bids are sometimes tabulated immediately, other times they are tabulated at the evaluation process later, and sometimes they aren't tabulated at all. The best method is to tabulate the bids immediately, so later it cannot be claimed that bids were altered or not considered. The tabulation is a permanent record of all bids received and should include each bidder's name, price, delivery promised, terms of payment, and perhaps unusual or pertinent facts.

If tabulation of bids is in any way impractical (bids covering hundreds of items, for instance) some type of duplicating technique can be used. The original or a copy becomes the permanent record.

The evaluation process is never entered into at the bid opening, and the purchasing agent handling the opening should *never make any comment indicating the possibility of award.*

4. EVALUATING BIDS AND AWARDING CONTRACTS

After tabulation, bids must be formally reviewed and evaluated and the contract awarded. Individual tasks in this process include:

TASK A: Determining bid evaluation and award authorities

TASK B: Determining bid bonding

TASK C: Evaluating bids

TASK D: Identifying and disposing of late or erroneous bids

TASK E: Awarding contracts

TASK A: Determining bid evaluation and award authorities

Purchasing laws are probably more specific with the evaluation of bids and awarding of contracts than with any other aspect of the purchasing process. The person with authority to make contract awards (usually purchasing officer) is permitted to use reasonable discretion in determining the successful bidder, but it is absolutely necessary that he *first have a working knowledge of all state and local statutes which relate to the process.*

*Go right now to your state and local statute books and cite any and all statutes that relate to the evaluation and award process. Describe each briefly. (If you do not have local statute books, do you have any idea how to locate such statutes?)

Statute _____

Description _____

Statute _____

Description _____

Statute _____

Description _____

Statute _____

Description _____

Statute _____

Description _____

Remember, you cannot begin to establish guidelines for this process or any other until you know your legal responsibilities and limitations.

Each unit of local government should have a person or persons in charge of advising both you as the purchasing officer, and the person who has final approval on purchases within your organization (whether it be county judge, the city manager, the mayor, or someone else) on the responsibilities and limitations of each function of the purchasing process. Such an advisory person should have a working knowledge of the legal system and good liaison with the local government for which he is working. He can be the county or city attorney, or in a larger government, legal counsel to the administration.

Whatever his position, it is important that you have a direct line of communication with him. There are so many legal questions that arise in the awarding of contracts, for instance, that should not be left unanswered. If you are able to contact easily a legal advisory person on the individual questions that arise your work will flow much smoother, and the complete purchasing process will be much more efficient.

It is also important that you as the purchasing agent have a familiarity with all state and local laws that apply to the purchasing process. Ideally, you as the purchasing agent should always be able to locate statutes and ordinances you need when you can't turn to your legal advisory person for assistance.

As the purchasing officer you should also be aware of the behavior expected of you. A written code of ethics for both purchasing officials and vendors can greatly assist you in being independent, and free from

obligation and above suspicion. This is especially necessary in the process of evaluating bids and awarding contracts. A code of ethics will be discussed in more detail in a later chapter.

TASK B: Determining if bid bonding is required

Bid bonding should be used in circumstances where you don't know the reputation of the bidder. As said before, if your bidders list is prequalified, the reputation of the bidder is already established by the time you award the contract, so bid bonding is not necessary. If you must bond a bid, however, establish procedures beforehand, making sure all legal implications are explained to you by your counsel. Conditions under which you will bond a bid must also be pre-established. (For instance, you might bond all bidders who have been in business for less than three months.)

TASK C: Evaluating bids

The purpose of evaluating bids is to determine the "lowest responsible bid meeting specifications," or "lowest and most advantageous." Despite the wording of the statute, the search is usually made for that bidder *whose bid is lowest in unit price, total cost of operation, or value per dollar than any other bidder whose reputation, past performance, and business and financial capabilities satisfy the government's needs.* As said before, the person who has the authority to make the awards can use his own discretion in determining the successful bidder. Such a decision though must be based on sound reasoning and written guidelines.

Openness, impartiality, and reasonableness are the aspects of our standard that especially apply to this process. *Openness* requires the written evaluation procedures be documented in writing and made available to all prospective buyers as well as the general public. (This is usually done in the Invitation for Bids.) *Impartiality* requires that all bidders be treated alike in evaluation, so favoritism, even unintentional, does not control. *Reasonableness* calls for an orderly and justifiable process.

Written guidelines in this process, like many others, are an important basic factor. They provide the rationale, consistency, and documentation to support the process. Such guidelines should include a determination of who submitted the lowest bid, whether the low bid is *responsive* and whether the low bidder is *responsible.*

Determining the low bid is cut-and-dry, but deciding whether such is responsive requires a bit more thought. A *responsive* bid is one which is in substantial conformity with the Invitation for Bids (IFB), absent of contradictory terms or errors, and reasonable in price. All this must be determined with extreme care by the purchasing officer or his appointee.

To determine if a bidder is *responsible*, (in addition to being *responsive*) you must decide if he is a proven dealer in the commodity and

can be relied upon to perform satisfactorily. If the bidder has been through the prequalification process and has already successfully met all criteria, then he has already been determined responsible. You can see that prequalification can save you much time during the bid and award process.

Many local governments have laws or policies that require giving preference to local products or bidders. Preference is arguably unconstitutional because it can be a barrier to interstate commerce and to local competition. Governing bodies should recognize that preference is promoted by business and special interest groups. The end effect of preference is costly and efforts to establish or maintain it should be resisted.

TASK D: Identifying and disposing of late or erroneous bids

Any bid received at the place designated for submission after the time set for opening of bids is a late bid. *A good policy to set is to reject all late bids regardless of the circumstances.* Some local governments, however, will accept late bids if the late bid was beyond the bidders control, and it was submitted without knowledge of the contents of competing bids. A bid can usually be accepted if the bidder released the bid from his control before the deadline (and it was delayed in the mail, or delivered by messenger to the wrong room, etc.). Detailed rules on late bids must be documented, including reasons for accepting or rejecting late bids, and the method for disposing of a rejected bid. Such rules should be made available to bidders and to the general public.

When mistakes occur in the sealed bid process, their treatment also should be covered by written policy. If a bidder finds he made a mistake after he has submitted a bid but before it is opened, he should be allowed to make formal changes or to withdraw his bid without revealing the amount. If it is possible, he should submit a corrected sealed bid in person or by mail.

If a mistake is discovered *after* the bids are opened, the purpose of competitive bidding is threatened. A bidder may want to "correct" his bid while knowing his competitors' prices. *The rule should be that changes are not allowed after bids are opened.* There are, however, reasons for valid exceptions, i.e., technical errors (misplacement of a decimal point).

If it is discovered that a low bid is substantially lower than other bidders, it is possible that the bidder made an unintentional mistake or simply a mistake in judgment. It would not be fair to enforce a bid so low that the bidder will incur severe loss if awarded the contract. Usually the problem can be handled by setting the bid aside or allowing it to be withdrawn.

Sometimes a bidder submits an alternate bid, or one that does not conform to the IFB. He may do this for a number of reasons. For instance, the product he has to offer may not meet the specifications but be the closest thing he has to offer. Or he may offer a newer, more advanced product than called for in the IFB. *As a rule, if such a bid is not responsive to the IFB, it should be rejected. If you would like to be able to accept alternate bids, you should indicate such in the IFB.* That way,

if alternate bids are accepted and an award is made based on an alternate bid, you could (and must) document the basis for this decision. Here too, reasonableness and impartiality are the criteria and favoritism must not be permitted. The most important thing to remember in identifying and disposing of late or erroneous bids is that all policies should be documented in writing to all bidders and the general public. Statutes should and can provide the basic authorities just discussed, but the need for detailed rules and policies is obvious.

TASK D: Awarding contracts

*Can you name an important task in awarding contracts? _____

_____

Document the procedures you will use, of course. The written procedures should require that when the contract is awarded, it should be made in writing to all competing bidders who submitted a bid.

5. WORKING WITH ALTERNATIVE PROCEDURES TO THE BID AND AWARD PROCESS

As said before, the sealed bid and award process is generally the best means of awarding a contract to a supplier; however, there are other acceptable methods that can be used under certain circumstances.

*Go right now to your state statute books, and locate those statutes that establish which types of purchasing are allowable in your local government. Check those listed below that are allowed:

__ emergency purchases

__ single-source purchases

__ competitive negotiations

__ petty cash purchases

__ blanket order purchases

__ cooperative buying

*Now go to your local statute books or local ordinances and see if you can locate what they mandate as permissable types of purchasing. Circle any of the above that are permitted to be used.

If any of the above six types of purchases are disallowed in your government by state or local mandate, you may skip the section below that is related to it.

A. Emergency Purchases

Emergencies are the most common special type of purchase for which the bid and award process is allowed to be by-passed. As a general rule, emergency purchases should only be allowed through permission of the central purchasing officer or someone in a higher position. This is so that if there are any commodities on hand that can be used an unneeded purchase is avoided. Central purchasing can also prevent duplicate purchasing in case several agencies want to purchase the same item.

Since some purchases are immediate emergencies, there should be some flexibility permitting department or agency heads to make them under special conditions. In such cases, records must be maintained to indicate the types and quantities of items purchased, the name of vendors, and the disposition of the items. Informal bids should be obtained on the purchase of an item whenever possible. The emergency purchase record should be sent to central purchasing for a procedural post audit.

B. Single Source Purchases

Single source purchases are made when there is only one acceptable vendor able to furnish a certain item or service. You, the purchasing official, with the assistance of the using agency, should have the responsibility of determining all single source purchases. In doing so, you should be able to answer "yes" to the following questions:

1. Is the item necessary to the operation of the agency?

2. Is the product unique and truly one-of-a-kind?

3. Is the vendor selected the only one capable of supplying the product?

4. Are there patented or proprietary rights on the product?

You must avoid making single source purchases that result from a preference for a particular company. You must assure that only one supplier is able to provide the item that will satisfy the intended use. All reasons for single source purchases must be well documented.

You must avoid making single source purchases that result from a preference for a particular company. You must assure that only one supplier is able to provide the item that will satisfy the intended use.

All reasons for single source purchases must be well documented. Remember that while there is a single source for a product at the manufacturing level, there may be multiple dealers which could provide at least a limited environment of competition.

C. Competitive Negotiations

This process involves informal discussion and bargaining to reach agreement on price and other terms under a proposed contract. It is used in situations where time is a crucial factor, high technology items (data processing or communications systems) are involved or when the purchase is for professional services.

Many believe that the use of negotiation is intended to prevent competition or is the same as single source procurement. This is not true. Actually, some of the principles that apply to the competitive negotiation processes are the same as those that apply to the bid and award process. For example, in competitive negotiations you should prepare a list of qualified bidders, give public notice of the intended purchase and solicit qualified bidders. A Request for Proposal (RFP) may be used instead of an Invitation for Bids. The RFP should include a description of an item or service to be purchased, the specific criteria to be used in evaluating the bids, and any other necessary information such as delivery dates or time frames within which the work must be completed. You also may need the bidder's experience in the line of work being considered, staff capabilities, and cost breakdown on the proposed price.

Sealed bids are not used in competitive negotiations; that is the main difference between it and the formal bid and award process.

After the above criteria are evaluated but before award is made, negotiations should be conducted individually with each qualified vendor, with minutes taken of each meeting. This is to obtain a contract agreement most advantageous to the government concerning performance, type of contract, quality, and price. At this time, competing firms' proposals should not be disclosed to one another, but after the contract is awarded, its terms and conditions should be made public record.

D. Petty Cash Purchases

Any small item needed immediately is usually made as a *petty cash purchase* from a petty cash fund. This eliminates writing numerous orders and saves time, supplies, and money. The maximum amount of a petty cash purchase ranges from $5 to $50, depending on the size of the government.

E. Blanket Order Purchases

Blanket purchase orders are used for repeated purchases from the same supplier. Instead of issuing a purchase order for each purchase, one order is issued for a specified time period. The size of the order may encourage competition.

F. Cooperative Buying

When several units of government get together to purchase a common good or service, such a purchase is called cooperative buying. The purpose is to obtain lower unit costs by buying larger amounts.

Each unit of government that is involved must agree to the specifications of the item, so anticipated requirements of each government are consolidated and sent out in the IFB. Before you decide to enter your government into a cooperative purchasing agreement, know all obligations you are assuming, and make certain it will be to your benefit to purchase under such a cooperative.

Cooperative buying includes state centralized purchasing, or purchasing items under a state price contract.

*Go right now to your state statute books and locate those statutes that relate to state price contracts.

Statute # _____

Description _____

Statute # _____

Description _____

Know these statutes, and their implications.

CHAPTER III: PUBLIC PURCHASING APPROVAL

In almost every city or county, the local elected or chief administrative official has final approval on all purchases, and in some larger governments the finance administrator has final approval. No matter who has final approval, a well defined line of authority for review and approval is necessary. This approval process can be broken down into six major steps.

1. ESTABLISHING LINES OF AUTHORITY FOR FINAL APPROVAL OF INVITATIONS FOR BIDS

2. INTERPRETING LOCAL GOVERNMENT LAWS REGARDING AWARDS PROCESS

3. ESTABLISHING PROCEDURES TO PROTECT AGAINST MALFEASANCE OF GOVERNMENT EMPLOYEES

4. IMPLEMENTING REQUIREMENTS UNDER FEDERAL GRANTS

5. SETTING UP FISCAL CONTROL PROCEDURES

6. DRAFTING A CONTRACT

1. ESTABLISHING LINES OF AUTHORITY FOR FINAL APPROVAL OF INVITATIONS FOR BIDS

The present procedure for review and approval of Invitations for Bids within your agency probably has been established through state and/or local statutes.

The normal process is that, after bids are received, tabulated, and evaluated, the lowest and best bid is submitted to the approval person(s) for evaluation. If the bid is approved, you should go on and prepare the purchasing order. If it is not approved, you are usually instructed to either (a) solicit bids again, (b) choose another bid, or (c) deny the purchase entirely.

The procedure should be checked to insure that it encourages the following: (a) prevention of bribery, kickbacks, personal interest, etc., (b) openness, (c) professionalism of the people who are in charge, (d) efficient organization, (e) effective communication, (f) adequate control, and (g) coordination between the purchasing official and the chief executive.

Remember, it is for your own benefit that Invitations for Bids are subject to an approval process. The responsibility for insuring compliance with written policy and guidelines is taken from you and placed on those in higher positions. An approval process also allows for better communication and interaction between you and the chief executive or chief administrative official.

Use the process properly and you'll get good results. If it is allowed to be used illegally, sloppily, or incorrectly, it will hurt your entire purchasing program.

*What is the present procedure in your organization for approving Invitations for Bids?

_____

_____

Do you think this is the best possible procedure? Yes ____ No ____

Why or why not? _____

_____

_____

2. INTERPRETING LOCAL GOVERNMENT LAWS REGARDING AWARDS PROCESS

Though the responsibility of seeing that Invitations for Bids conform to set guidelines and procedures is partly that of the approval person(s) in your government, you as the purchasing authority are usually given complete authority for making awards. For this reason, you must be very familiar with all of your government's laws that refer to the award process.

*Go right now to your local statute books and find all statutes that refer to the award process. List each below, describing it in two sentences or less.

Statute _____

Description _____

_____

Statute _____

Description _____

_____

How did you do? If you had trouble with the interpretation of the statutes, don't be upset. Many people do! That is why there are people both in local and state government whom you can seek out to help you in the interpretation of the statutes.

But maybe you feel that the existing statutes in your government do not sufficiently cover all necessary areas of the award process. Or perhaps you feel that the statutes are *too restrictive*. Either way, it is your duty to help get them worded properly and neither be too restrictive nor too permissive.

By looking at other local governmental laws, you can get a good idea of the types of restrictions your local government needs. Seek out purchasing structures similar to your own and observe the type of statutes they have to control it.

If you do not have good laws, find someone or someplace that does so you can initiate changes in your own. People are willing to help, especially your counterparts, so give them a try.

3. ESTABLISHING PROCEDURES TO PROTECT AGAINST MALFEASANCE OF GOVERNMENT EMPLOYEES.

Malfeasance *is misconduct by a public official*. Such misconduct can include conflicts of interest, bribery, kickbacks, and avoiding regulations. A local government should have legislation that covers such misconduct, including specific statutes dealing with each situation as it relates directly to the purchasing process. Let's deal with each type of misconduct separately.

Conflicts of Interest

A conflict of interest occurs in a contract when the personal interest of the government employee or official is affected. In other words, if one of the employees of government who can influence the award of a contract has self-interest in it, we must assume that he could not be objective in its award. In this case, the contract must be determined void.

The first step your government should take to prevent conflict of interest contracts is to pass a statute which defines conditions under which a "conflict of interest" exists.

The conflict of interest statute should prohibit certain governmental individuals from having specific types of involvement, such as conducting an outside business and signing a contract with their own agency, or signing a similar contract with any government agency. A more stringent statute would prohibit persons from appearing before a government agency within two years after termination of employment with them. At a minimum, legislators, noncivil service or nonmerit executive personnel, and all purchasing personnel should be prohibited from being agents for bidders and signing contracts with the government. Relationships with personnel of businesses selling to the government, including partners, board members,

officers or employees should also be prohibited. (Spouses of those employees should be under the same prohibitions.)

Since conflicts of interest can destroy the integrity of the purchasing process, protection in this area is essential. Each contract should be thoroughly examined by you to determine if a conflict of interest is present. *Every contract resulting from a conflict of interest should be declared void.* The public employee responsible should pay the government a penalty of the amount of his profit plus the amount of any loss to the government. Other penalties for violating conflict of interest statutes could be civil damages for three times the loss to the government, criminal penalties of a minor felony, removal from office, or a permanent bar from holding office or employment with the government.

Remember that even if a contract involving a conflict of interest might be most advantageous for the government, it is still not right. It still must be declared void. A contract should also be declared void even if the public employee who holds the interest disqualifies himself. Just because he disqualified himself from acting on the contract does not mean he cannot influence other persons actions on it.

Kickbacks and Bribes

The types of offers that should be included in a statute definition of kickbacks and bribes are promises, obligations, contracts for future reward, gratuities, contributions, loans, reward rebates, gifts, money, or other things of value. It should be presumed that when an interested party makes any gift to purchasing personnel, the gift is made and received for the purpose of influencing purchasing decisions.

Acts of giving and/or accepting something of value to influence a contract award should be criminal offenses whether the exchange is intended or not and the contract influenced should be declared void. The government employees involved should be held financially liable for any losses to the government because of the bad contract. In many local governments, government officials and employees who can influence awards are bonded so the government can recover from any financial damage if they should accept a bribe or kickback.

Again, any contract involving a bribe or kickback should be declared void, and the government should also be released from any other current or future financial obligations to the firm. However, if the firm can prove that the agent who initiated the kickback or bribe acted entirely on his own, without the management level being involved, then the firm should be allowed to continue its business with the government.

Ignoring Statutory Requirements

If a using agency or purchasing agent ignores the purchasing laws and/or rules, the situation may not seem to be as bad as a case of bribery or conflict of interest. So when such unlawful practices are

discovered, they are sometimes not punished, and the problem repeats itself. If this occurs, the purchasing system will really have problems.

For instance, if you as a purchasing agent or one of the using agencies order an item without going through the proper channels, makes emergency purchases in non-emergency situations, or makes many individual petty-cash purchases in the place of one large purchase under competitive bidding, problems can begin to develop. And if a constant practice is made of this without any reprimand, your total purchasing system is threatened.

If an illegal purchase is discovered before payment, the person responsible must be given a firm warning. If the illegal purchase is not discovered until after payment has been made, a strong reprimand from the legislature, board, or chief executive should be in order. This will not solve the problem but will prevent it from happening again.

4. IMPLEMENTING REQUIREMENTS UNDER FEDERAL GRANTS

One important responsibility that you have as a purchasing agent is assuring that requirements under federal grants are effectively implemented. Depending on your federal grant involvements, this may include determining needs, submitting proposals, managing programs, or writing quarterly reports.

In implementing programs under federal grants, achieving program objectives should be given the most emphasis but unless you also place importance on guidelines and requirements, you will lose your program entirely.

Control of federal grant requirements should be written into your purchasing system's organization. You, or one person designated by you, should maintain control of all federal proposals, grants, and operating programs.

5. SETTING UP FISCAL CONTROL PROCEDURES

Most fiscal control procedures were discussed in Chapter I: "Central Purchasing."

*Can you remember two of the procedures suggested for control of purchasing?

1. _____

_____

2. _____

_____

The procedures suggested were:

1. *Using agency data* for identifying anticipated purchases and their quantities

2. *Budget data* for controlling forecasted needs on a long-term basis

3. *Management information systems* for evaluating information on past purchases

After you gather information concerning past activities and future estimates, it is best to analyze your *present cost-savings*. This will give you information to determine if volume-buying would be more efficient for your agency than spot-purchasing.

Volume-buying, when compared to spot-purchasing, does not invariably result in savings. First, your suppliers may not be able to accommodate this type of purchasing. Second, since volume-buying initially requires more planning and coordination than a single spot-purchase, added purchasing costs must be considered in volume-buying. Third, even if you do set up a volume-buying system, there will be many items that still require an individual purchase. It is, therefore, necessary to weigh the anticipated costs associated with each method and determine where the most savings are realized.

Two widely accepted methods used by most local governments for volume purchases are *term contracting and scheduled buying*.

Term contracting establishes a source of supply for a designated time. Most local governments allow contracts to be made for a definite or indefinite period of time as well as for a definite or indefinite quantity of items. Term contracting can reduce administrative costs; the purchaser also can avoid repetitive activities involved in issuing Invitations for Bids on the same or similar items, and in receiving, controlling, and evaluating the bids. Term contracting permits handling larger volumes of purchases with fewer personnel and reduces or eliminates problems and costs of maintaining inventories.

Scheduled buying appears to be a spot, or one-time purchase, but the item is purchased in bulk for all agencies at specified intervals throughout the year. Purchasing intervals are established according to using agency consumption patterns (considering warehousing capabilities and seasonal factors).

The decision whether to use term contracting, scheduled buying, or another purchasing procedure depends upon several factors: the type of commodity to be purchased, what it will be used for, and how accurately you can determine the quantity required.

*What *type* of item should be bought under term contracting, under scheduled buying? _____

Items which are usually required year-round and used among all agencies should be bought under *term-contracting;* items required on a seasonal basis or which have a nonconsistent use are more suited to *scheduled buying.*

6. DRAFTING A CONTRACT

Once a purchase award has been approved, it is the purchasing agent's responsibility to begin an "approval process" on the drafting of a contract. Drawing from the information in the specifications, the IFB, and purchasing agency's policy, the purchasing agent should sit down with his legal advisory person to draw up the legal contract.

Once the contract has been written, a "contract sheet" showing the vendor, contract items, prices, terms, and other pertinent provisions should be sent to each agency or division concerned. A copy of the contract sheet should also be filed in central purchasing.

CHAPTER IV: INSPECTION AND TESTING PROCEDURES

Inspection and testing procedures include inspecting items to determine whether they have been received in proper quantity and condition and conform to agreed specifications. A formal inspection process, centrally controlled and with uniform rules and procedures should be established for three reasons:

1. To assure the proper quantity of goods received

2. To encourage using agencies to submit complaints

3. To reduce the possibility of collusion (secret agreements) between suppliers and receiving personnel

The total inspection and testing process can be broken down into four basic functions:

1. ORGANIZING THE INSPECTION PROGRAM

2. PUBLISHING AN INSPECTION MANUAL

3. ESTABLISHING CONDITIONS AND WRITTEN PROCEDURES FOR SERVING COMPLAINTS AGAINST SUPPLIERS

4. COORDINATING TESTING OF SIMILAR ITEMS AND SHARING TEST RESULTS

1. ORGANIZING THE INSPECTION PROGRAM

Some larger local governments have, as part of the central purchasing authority, special teams who inspect goods received. Such a staff should be kept separate from the purchasing agent and specification staff. This segregation of duties will provide a check in the system and prevent any favoritism in item selection and evaluation.

A central inspection staff is probably the most effective method of inspecting items but not usually the most efficient in smaller units of government. In smaller units inspection functions should be given the using agencies with central purchasing making spot checks in unusual circumstances.

No matter where they are located the receiving personnel should have ready access to data pertaining to purchased items. For instance, they must have access to an item's specifications in order to decide if deliveries conform to requirements. They should also have all copies of award documents so they can effectively plan their inspections.

If at all possible, receiving personnel should have separate testing facilities for most of their product tests. Sometimes arrangements can be made with local colleges or universities to do some of the testing. For food items, some governments use the facilities of the U. S. Department of Agriculture. Tests can also be run by local or regional private laboratories in case of real need, but that is usually quite expensive.

2. Publishing an Inspection Manual

An important consideration for insuring that thorough inspections will be conducted is setting forth procedures, responsibilities, and standards either in a separate inspection manual or as part of the purchasing procedures manual. The manual should include discussion of the following factors:

1. Inspection techniques
2. Equipment to be used
3. Facilities available for outside testing
4. Detecting and handling nonconforming deliveries
5. Dealing with damaged goods and obvious discrepancies
6. Checking for and managing late deliveries

3. Establishing Conditions and Written Procedures for Serving Complaints Against Suppliers

Complaints should be served against suppliers under the following conditions:

1. Nonconformance with specifications
2. Noncompliance with contractual terms and conditions
3. Dissatisfaction with any other factor of performance

Such complaints should be recorded and referred to central purchasing and then resolved with the supplier. There are two methods of resolving the complaint: the inspector can contact the supplier directly; or he can report the situation to the purchasing agent, who then initiates contact with the supplier. Both methods work well if used appropriately.

One of the best methods of having the complaint resolved is to give the supplier a specified number of days to perform according to the contract. If he does so, an information report should be sent to central purchasing; and if further action is necessary, the purchasing agent himself contacts the supplier. Sometimes when a supplier doesn't live up to his promises, it is necessary to revise the delivery schedule, cancel the contract, or initiate a new purchase action. A written notice to the supplier or even removal from the bidders list may be necessary.

*Now see if you can list what should be included in a letter of complaint to a supplier.

1. _____

2. _____

3. _____

The things that should be included in a letter of complaint are:

1. Reason for complaint

2. Number of days allowed the supplier to comply with the requirements

3. Consequences of the supplier's noncompliance (removal from the bidders list, cancellation of the contract, etc.)

4. COORDINATING TESTING OF SIMILAR ITEMS AND SHARING TEST RESULTS

If your government buys many items similar to those purchased by other governments, a coordinated testing program would be beneficial to all. Combining your resources, especially the testing facilities, would not only assist smaller governments that do not have certain facilities, but would also eliminate much duplication among those governments that do have them. Uniform testing procedures can easily be developed from standards. Such coordination is very practical, but not very often used.

Again, the following national organizations have an interest in uniform inspection and testing programs:

National Purchasing Institute, Inc.
P. O. Box 20549
2189 Bellaire Boulevard, Suite 209
Houston, Texas 77025

National Institute of Governmental Purchasing, Inc.
1001 Connecticut Avenue
Washington, D. C. 20036

*Can you list any organizations in your state, or even locally, that have an interest in uniform inspection and testing?

State _____

_____

Local _____

_____

There should be at least one or two. Contact them and let them help you to coordinate your inspection and testing programs.

CHAPTER V: SURPLUS ITEMS DISPOSITION

Surplus items are those in excess of present and near-future needs, but are still useful and should not be labeled "scrap." An item becomes surplus for three reasons:

1. It's use is decreased.
2. It is replaced by a newer item.
3. A program is changed or discontinued.

Disposing of surplus items is closely related to acquiring the items and managing inventory on them. The total disposition process can be broken down into two functions:

1. IDENTIFYING SURPLUS ITEMS
2. ESTABLISHING METHODS FOR DISPOSITION

1. IDENTIFYING SURPLUS ITEMS

In order to effectively dispose of items, immediate identification of surplus and scrap is necessary. If identification is delayed, storage and maintenance costs and possible deterioration of the items can result.

Surplus items can be identified best through the inventory process. Central purchasing should periodically inventory the stock of all using agencies to discover any excess. Some local governments let each using agency determine excess items. This works very well if the using agencies are given some incentive not to hoard items for possible future use. An incentive to give them for instance, is purchasing credit for any items they release that are sold.

Regardless of the *process* you choose for declaring items surplus (and differentiating between surplus and scrap), *set it forth in writing.* In the writing process, establish close coordination between central purchasing and each using agency.

2. ESTABLISHING METHODS FOR DISPOSITION

The method for disposing of an item is dependent upon three things: whether it is determined surplus or scrap; its nature; and the needs of other agencies in relation to it. With all of these factors considered, the item may be *transferred, traded in, sold, or destroyed.*

Transfer

Transferring items no longer needed in one agency to another agency needing them is usually the best way to dispose of them. Such a method is, of course, most efficient in the larger units of government, since all items to be transferred must go through a systematic procedure within central purchasing. For a relatively large unit of government, for instance, the procedure may include processing all requisitions through the surplus property section, or periodically circulating lists of surplus items and "want lists" among using agencies. A want list should show what items using agencies need but can't afford, and should be maintained by the surplus and scrap section.

Transfer of surplus items can result in considerable savings when you use your imagination to find new functions for items. For instance, one using agency may have some equipment that is technologically obsolete, but could be used in another agency for teaching purposes, or even broken down into parts for a variety of other uses.

*Go now to your state and local statute books and cite any legislation controlling the transfer of surplus property, either in-house or among other local agencies.

Statute _____

Description _____

Statute _____

Description _____

Are *intergovernmental transfers* allowed in your governmental unit? They can be very helpful if they are. Some governments even keep lists of priorities for transfer or sale to another government or to tax-supported activities within the state. They also may keep want lists on these other units. All of this is a very good example of intergovernmental cooperation.

Trade-ins

Trading-in an old item for a new is sometimes possible, but almost never an efficient method of disposal. Though it is an easy method, the total value of the item is usually not realized. Experience generally produces a better return than trade-ins.

If you want to call for a trade-in on an obsolete item for a new one, indicate so in your Invitation for Bids. This will allow suppliers to make bids with and without the trade-in, and the best trade-in offer can then be compared with the obsolete item's expected sale price.

Sale

The sale of surplus property or scrap is probably the best method for its disposal. The government does not sell surplus and scrap as a public service venture, but to get the best value it can for obsolete items. The government should make it clear to all buyers that it makes no guarantees for items sold. The government, in all fairness, should describe the conditions of the items and list known defects. Beyond that it should be made clear that responsibility rests with the buyer. *Conditions of sale* should be published in advertisements and in notices posted at the site of the sale. Such conditions should include:

1. It is the buyer's responsibility to remove the items within a reasonable time after purchase.

2. The government provides no guarantees or warranties and assumes no responsibility after items are sold.

3. Known defects are listed, but the government makes no claim that all defects have been identified. No sale will be made invalid due to defects discovered later.

There is one basic technique used for the sale of scrap--separating scrap into its component parts; and there are two techniques used for the sale of surplus items--auctions and sealed bids.

Sale of scrap The most profitable technique in selling publicly owned scrap material is separating the scrap into its component parts. This is sometimes an involved process, but the sale of components will often bring a much higher return, and such a method will make it easier to sell any surplus property as scrap.

Sale of surplus items through auctions Holding auctions can be very profitable in selling surplus items. Auctions should be advertised to the general public and sometimes directly to government employees. Items can be inspected either at the auction site or at the user's location. Other types of information on an item can also be provided, for example, describing the condition of equipment, giving odometer readings of vehicles, or providing pictures of the items. It is best to hire an auctioneer to handle the proceeding--for one price he will usually tag items, auction them, and record their sale.

Sale of surplus items through sealed bids Most surplus (and some scrap items) can be sold by sealed bid, a method very similar to purchasing through sealed bids. Bid lists are kept by commodity, and public notice of each sale is made. Interested parties must be given the opportunity to inspect items for sale, and descriptive literature on the item should be made available. A date is set for public bid openings, and the government should have the right to reject bids.

*Name three methods for disposing of waste or surplus items. (These were covered in the last chapter on Surplus Items Disposition.)

1. _____

_____

2. _____

_____

3. _____

_____

*How was your memory? Check back with Chapter V, page II.2.55 to find out, and perhaps you will want to reread the section.

CHAPTER VI: WAREHOUSING

Warehousing is the process whereby you receive, store, and disburse repetitive use and surplus items. It is actually inventory control in a central geographic location: keeping inventories in balance; eliminating multiple locations of the same commodity; and creating a central depository for all using departments. Warehousing has the potential of cutting overhead costs, making materials available when needed, and reducing complaints from using departments on services.

Not all local governments would benefit from a warehousing system, but the percentage of those now using warehousing should definitely be increased. Any jurisdiction with a population of 50,000 or more and responsible for operating its own electrical, water, and sewer facilities would experience savings of many kinds by using a warehousing system. Without the named utilities, 100,000 would probably be the population criterion; with one or two of the utilities, 75,000 would be the criterion.

The total warehousing process includes a variety of activities, which can be broken down into two basic functions:

1. RECEIVING, STORING, AND DISBURSING ALL REPETITIVE USE ITEMS

2. RECEIVING, STORING, AND DISBURSING ALL SURPLUS OR SCRAP

1. RECEIVING, STORING, AND DISBURSING ALL REPETITIVE USE ITEMS

This is the main function of a warehousing program--receiving, storing, and disbursing repetitive use items *in a central location.* This reduces inventory costs and overhead costs, makes materials available when needed, and lessens personnel required to handle complaints, etc.

TASK A: Receiving repetitive use items

If you do not have a good system of receiving repetitive use items, even efficient buying, sound specifications, and economical quantity purchasing will not save your purchasing program. A specific person(s) within the warehouse should be designated the responsibility of receiving and inspecting all property and services purchased. Repetitive use items are subject to the same inspection as ordinary goods received--at the central purchasing authority or at each using agency. If they fail to (1) meet contract specifications, (2) meet performance requirements, (3) be in good condition when delivered, or (4) conform to samples

previously submitted, they should be rejected. Notice or rejection should be given to the vendor within a reasonable time by the warehouse.

All requirements that apply to inspection and testing at the user agency level also apply to the warehousing system. That is, receiving personnel should be provided with specifications for goods received, inspections may be done at outside agencies, and all complaints against suppliers should be justified in writing.

TASK B: Storing and disbursing repetitive use items

Storing items in one central warehouse helps keep inventories in balance, lets items be available when needed, and eliminates small stockrooms all over the area.

Again, one person or group of persons should be assigned to control inventory and central storage within the warehouse.

The initial step that should be taken in establishing an inventory control system is to set up a workable "group classification" system of stock storage which coexists with requisitioning and purchsing. Supplies should be grouped with stock numbers assigned to each group and to each item. For example: *paper, erasable bond, stock number 80-P-456.*

Once this system has been set up, all your supplies will be ready for emergencies--shortages, oversupply lost items, etc., and you will also have a good control on everyday activities--receiving, meeting requests, and distributing. But you can't abandon the system once you have set it up, or your goal of efficiency won't be reached.

First, *every transaction must be recorded as soon as it occurs.* If not, it could be recorded incorrectly or be completely forgotten. Also, if items are disbursed and the transaction is not recorded, on-hand inventory will appear to be greater than it really is, and late-ordering will insure immediate recording of transactions. Use of such terminals also reduces the amount of data to be recorded, provides an immediate check on the validity of the entry, and just about eliminates transaction errors.

Second, *in taking inventory, always count and don't make guesses.* Attach stock bin cards in a visible place on all bins. On the bin card, have columns for receipts, issues, remaining balance, and the date. This allows the storekeeper to tell at a glance whether sufficient stock is available to meet a requisition. You can also keep a stock record card in a central file for "planning and control," but this does allow for more chance of error.

2. RECEIVING, STORING, AND DISBURSING OF ALL SURPLUS OR SCRAP

The same principles of "surplus items disposition" used by the central purchasing authority also apply to warehousing. The only difference is that a more strict method of recordkeeping should be applied to all waste or surplus items disposed of in a warehouse.

CHAPTER VII: APPENDIXES

APPENDIX 1: SPECIFICATIONS

SPECIFICATION: Paper, Toilet Tissue (Institutional and Industrial)

KENTUCKY STANDARD NO: 8540-1

1. SCOPE

1.1 This specification covers two (2) types of toilet tissue. Agencies are to supply Supplemental Data to this specification as specified in 6.1

2. 2.1 This specification covers the following types:

Type I - Single-Ply Roll Tissue

Type II - 2 Ply Roll Tissue

3. REQUIREMENTS

3.1 Material - The toilet tissue shall be made from clean pulp; shall be unglazed, soft, clean, non-abrasive, and of even formulation; free from slivers, dirt breaks, wrinkles, holes, and such other imperfections as would affect either appearance or serviceability or both; shall be rectangular without ragged or irregular edges; shall have a maximum of 0 percent ground-wood fiber. Tissue shall be deemed safe for use in septic tanks and must readily break-up in water when agitated. It shall be the manufacturer's first-line product.

3.2 Physical Characteristics, Type I

Type I - Paper, Toilet Tissue, Facial Quality, Single-Ply Roll, White, Sheet Size 4½" x 4½", 1000 Sheets Per Roll, 96 Rolls Per Case, Individually Wrapped, Standard Core.

Roll Construction - Roll tissue shall be evenly and tightly wound on a stiff round paperboard core having an inside diameter of 1-3/8 to 1-3/4 inches, sufficiently rigid to prevent collapse under ordinary conditions of transportation and usage.

Brightness of Paper - Shall be a minimum of 68% (Test Method T452, Federal Specification UU-P556)

3.2 Physical Characteristics, Type I (Continued)

Basis Weight - Shall be a minimum of 11.0 lbs.

Single-Ply Perforation - Tissue roll shall be perforated at not less than 4¼ inch nor more than 4-5/8 inch intervals and shall average not less than 4,500 inches per roll (1000 sheets perforated at 4½ inch intervals or 1,060 sheets perforated at 4¼ inches). No single roll shall be less than 4,375 inches in length.

3.3 Physical Characteristics, Type II

Type II - 2 Ply, Bleached, White, Sheet Size 4½" x 4½", 500 Sheets Per Roll, 96 Rolls Per Case, Individually Wrapped Standard Core.

Roll Construction - Roll tissue shall be evenly and tightly wound on a stiff round paperboard core having an inside diameter of 1-3/8 to 1-3/4 inches, sufficiently rigid to prevent collapse under ordinary conditions of transportation and usage.

Basis Weight - Shall be a minimum of 9.5 lbs.

2 Ply Perforation - Tissue roll shall be perforated at not less than 4-3/8 nor more than 4-5/8 inch intervals and shall average not less than 500 double-ply sheets per roll and no single roll shall contain less than 488 sheets.

Brightness of Paper - Shall be a minimum of 68% (Test Method T452, Federal Specification UU-P-556).

4. SAMPLING, INSPECTION AND TEST PROCEDURES

4.1 Sampling - A sample package shall be furnished for each type asked for in the Invitation to Bid.

4.2 Inspection - As Required

4.3 Testing - Shall be performed by practical application.

5. PREPARATION FOR DELIVERY

5.1 Packaging

5.1.1 Each individual package shall be firmly wrapped to resist deformity in handling.

5.1.2 Shall be packaged and packed according to the manufacturer's practice in a manner acceptable to common carrier for safe transportation to destination as specified.

5.2 Marking - Unless otherwise specified, shipping containers shall be marked with the name of the material, the size, type, and quantity contained therein as defined by the contract or order under which shipment is made, the number of the contract or purchase order.

5.3 Labeling - Shall show product name and address of manufacturer.

6. NOTES

6.1 Supplemental Data - Requisitioning Agency shall specify the following:

Type and Quantity

6.2 Only established branded products that meet or exceed the quality level of the approved brands listed herein shall be considered for inclusion in this Acceptable Brands List.

6.3 Only registered manufacturer's brand names will be considered. Private brands will not be considered.

6.4 Specifications - Additional copies of this specification may be obtained by writing to the Standard and Specifications Section, Division of Purchases, New Capitol Annex, Frankfort, Kentucky 40601.

INVITATION TO BID
Project #2139

Date Issued: March 1, 1977

Vendor Name and Address: Parker and Sons, Architects
Second Street
Lexington, Kentucky
Phone: 606-252-4031

Bid opening date: May 14, 1977

Time: 10:00 A.M.
Location: Room 208
First National Bank Building
Jonesville, Kentucky

Sealed bids must be received by this date.

You are invited to bid on the following:

Jonesville Municipal Building-a four-story, thin-shell concrete, building, 300 feet in diameter, including electrical work and plumbing

Terms and conditions:

1. Bids must be mailed or delivered to the Board of Commissioners, First National Bank Building, Box 2123, Jonesville, Kentucky, 42301.

2. Bids must be submitted in ink or on a typewriter and signed in ink; they must be presented in a sealed envelope with the Bid number and Date of opening written in the lower left-hand corner.

3. Any company failing to respond to two consecutive invitations or four courtesy responses may, at the discretion of the Board, be dropped from the bid list.

4. All proposals must be on a lump sum basis. Please quote your single best net price. Bids must be firm containing no escalator clauses.

5. Delivery date is October 1, 1978.

6. Bid bond in the amount of five percent of the proposal must accompany each proposal.

7. Any product delivered that does not meet specifications as approved by the Board, or does not produce the effect required, shall be returned at the company's expense. And the company shall refund to the city any money which has been paid them for the product.

8. The Board of Commissioners reserves the right to accept or reject any bid according to the best interests of Jonesville. A bid may be awarded in part or whole according to the best interests of Jonesville.

G L O S S A R Y

Acquisition program--Acquiring of materials by purchases; should encompass planning and scheduling, designing Invitations for Bids, soliciting bids, receiving, opening, and evaluating bids, making awards, expediting, and contract administration.

Alternate bid--A bid submitted in knowing variance from the specifications. Such a bid is only acceptable when the variance is deemed to be immaterial.

Award--The presentation of a purchase agreement or contract to a bidder; the acceptance of a bid or proposal.

Bid--The instrument by which a supplier presents item specifications and prices for a buyer.

Bid and award process-The process of seeking out a product and buying it.

Bid-award file--A file that is divided into commodity and item sections each of which contains listings of who was solicited for individual bids, what each response was, and other information. The bid-award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

Bid bond--An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to sign the contract as bid.

Bid deposit--A sum of money or check, deposited with and at the request of the government, in order to guarantee that the bidder (depositor) will, if selected, sign the contract as bid. If the bidder does not sign the contract, he forfeits the amount of the deposit.

Bidders list--A list maintained by the purchasing authority setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

Brand name specification--A specification that cites a brand name, model number, or some other designation that identifies a specific product as an example of the quality level desired.

Budget data--Information contained in an annual budget submitted by using agencies and approved by management.

Central purchasing authority--The administrative unit in a centralized purchasing system with the authority, responsibility, and control of purchasing activities.

Collusion--A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.

Commodity--An article of trade, a moveable article of value, something that is bought or sold; any moveable or tangible thing that is produced or used as the subject of barter of sale.

Commodity classification groupings--Groupings, each representing a particular function with which a group of products is commonly associated.

Competitive bidding--The offer of prices by individuals or firms competing for a contract, privilege, or right to supply specified services or merchandise.

Competitive negotiation--A technique for purchasing goods and services, usually of a technical nature, whereby qualified suppliers are solicited, negotiations are carried on with each bidder, and the best offer (in terms of performance, quality of items, price, etc.) as judged against proposal evaluation criteria, is accepted; negotiated award.

Conditions of sale--A statement containing conditions of items and list of known defects for something to be sold; makes clear that responsibility for inspection rests upon buyer.

Cost-savings analysis--The process of evaluating the difference between spot purchasing and volume buying.

Design specifications--A purchase specification delineating the essential characteristics that an item bid must possess to be considered for award and so detailed as to describe how the product is to be manufactured.

Disposition--Acting to remove from the premises and control of a using agency goods that are surplus or scrap. Disposition can be accomplished by transferring, selling, or destroying the goods.

Emergency purchase--A purchase made without following the normal purchasing procedure in order to obtain goods or services quickly to meet an emergency.

Emolument--The returns arising from office or employment usually in the form of compensation.

Erroneous bid--A miscalculation in composing a bid resulting in an incorrect price or other term which may affect the bidder's eligibility to be awarded the contract.

Expedite--To hasten or to assure delivery of goods purchased in accordance with a time schedule, usually by contact by the purchaser with the vendor.

Fixed price contract--A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.

Group classification system--A system whereby supplies are grouped with stock numbers assigned to each group and to each item.

Informal bid--An unsealed competitive offer conveyed by letter, telegram, telephone, or other means.

Invitation for Bids--A request, verbal or written, which is made to prospective suppliers requesting the submission of a bid on commodities or services.

Kickbacks--Acts of giving or accepting something of value to influence the award of a contract.

Late bid or proposal--A bid or proposal which is received at the place designated in the Invitation for Bids after the hour established by the invitation as the time by which all bids or proposals must be received.

Letter of complaint--Written procedure for serving complaints against suppliers.

Line item--A procurement item specified in the Invitation for Bids for which the bidder is asked to give individual pricing information and which, under the terms of the invitation, is usually susceptible to a separate contract award.

Lines of authority--In purchasing, the procedure for reviewing approval of Invitations for Bids within an agency-established through state and/or local statutes.

List price--The published price for an item that a vendor uses for informing customers and potential customers.

Malfeasance--Misconduct by a public official.

Management information system--Reporting system showing items and quantities bought in the past.

Market information files--The files on supply sources.

On-hand inventory--Supplies in stock.

Performance specifications--A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.

Prequalification of bidders--The screening of potential vendors in which a government considers such factors as financial capability, reputation, management, etc., in order to develop a list of bidders qualified to bid on government contracts.

Procurement--The process of obtaining goods or services, including all activities from the preparation and processing of a requisition,

through receipt and approval of the final invoice for payments. The acts of preparing specifications, making the purchase, and administering the contract are involved.

Purchase order--A purchaser's document used to formalize a purchase transaction with a vendor. A purchase order, when given to a vendor, should contain statements as to the quantity, description, and price of the goods or services ordered; agreed terms as to payment, discounts, date of performance, transportation terms and all other agreements pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

Purchasing agent--An administrator whose job includes soliciting bids for purchases and making awards of purchase contracts; buyer.

Purchasing official--The administrative official who most directly oversees the activities of purchasing agents and those other aspects of property management that are joined as separate or subordinate sections under individual administrative control.

Purchasing manual--A formal collection of instructions relative to procedures to be followed by all parties when making use of or dealing with the purchasing department in procurement actions.

Qualified bidder--A bidder determined by the government to meet minimum set standards of business competence, reputation, financial ability, and product quality for placement on the bidders list.

Regional bidding--A bidding process whereby deliveries are made to widely scattered points or the requirements are of a local nature. In such a process, the bidders list is divided into needing geographic regions.

Request for proposal(RFP)--A request for a bid on commodities or services which is made to prospective buyers in competitive negotiation.

Rotational bidding--Invitations to bidders which are sent out on a rotational basis; each bidder gets a bid over a period of time.

Scheduled buying--A purchase for which a bid opening date is prescheduled so that using agencies' requirements for the period covered by the contract can be gathered and combined for the Invitation for Bids.

Sealed bid--A bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids; usually required by the purchasing authority on major procurements to ensure fair competition among bidders.

Single -source procurement--An award for a commodity which can only be purchased from one supplier, usually because of its technological, specialized, or unique character.

Spot purchase--A one-time purchase made in the open market out of necessity or to take advantage of a bargain price.

Standard application form--A form that includes financial standing and responsibilities, facilities for production, distribution and service, and length of time successfuliy in business; used to pre-qualify bidders.

Standard specification--A specification established through a standardization process to be used for all or most purchases of the item involved.

Stock bin card--Card attached to bin which includes columns for receipts, issues, remaining balance, and date..

Surplus property--Inventory not required by one using agency or any using agencies at the present time or in the foreseeable future.

Tabulation of bids--The recording of bids and bidding data that was submitted in response to a specific invitation for the purpose of comparison, analysis, and record-keeping.

Term contracting--A technique in which a source or sources of supply are established for a specified period of time, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

Testing--A phase of inspection involving the determination by technical means of the physical and chemical properties of items or compounds thereof, requiring not so much the element of personal judgement as the application of recognized and established scientific principles and procedures.

Using agency--A unit of government that requisitions items through central purchasing.

Vendor buying--Purchasing in large quantities in order to reduce the price per unit; volume purchasing.

Want list--A list of what items using agencies need but cannot afford within their own budget.

Warehousing--The process whereby repetitive use and surplus items are received, stored, and disbursed from a central geographic location.

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PURCHASING MANUAL

POST TEST

The attached questions directly relate to the information contained in the Purchasing manual you have just completed. Please answer each question to the best of your ability by circling the correct answer.

You can check your answers with the answer sheet in the appendix.

PURCHASING EVALUATION QUESTIONS

1. A "qualified bidder" is a bidder who:

   a. Represents a nationally advertised product
   b. Is determined by the purchaser to meet minimum set standards and is placed on the bidders list
   c. Has met the requirements of federal bidders standards
   d. Has a minimum of five years experience with the product on which he is bidding

2. There are two different views concerning government purchasing bidders list. One view is that bidders should be prequalified for the list. The other is:

   a. The purchaser decides on his own who he does and does not want on the list
   b. Any interested supplier who submits an application is automatically included on the list
   c. No real list is maintained
   d. A bidder is only put on the list after he makes a bid for a product

3. Name the steps that should be included in the prequalification of bidders: (Choose 3)

   a. Establish a standard application form
   b. Discourage unqualified bidders from applying
   c. Set forth evaluation policies in writing
   d. Insure that the evaluation policies are kept confidential
   e. Notify the supplier in writing if he has been accepted for the list

4. The process of removing bidders from the list should include which of the following steps? (Choose 3)

   a. Establishing a vendor file
   b. Documenting a bidder's performance failure
   c. Informing the bidder in writing that he will be removed from the list
   d. Informing all other bidders of the bidder who was removed

5. The usual procedure for reinstating a bidder to the list should include which one of the following?

a. The bidder submits evidence that he has cured the problem causing his removal
b. The bidder and the purchaser have a formal talk and come to a compromise
c. The bidder cannot be reinstated to the same list from which he was removed; he must be placed on a new list
d. Under no circumstances can a bidder be reinstated to any list once he has been removed

6. A major function of maintaining the bidders list is to:

a. Keep it organized into commodity codes
b. Delete bidders
c. Continually seek new sources of supply
d. All of the above

7. In some local governments, the bidders list includes only the name, address, and commodity category of each vendor. In other places, where prequalification is used, detailed questionnaires are kept on file which include which of the following pieces of information? (Choose 3)

a. Length of time successfully in business
b. Facilities for production
c. Major competitors
d. Commodity category

8. "Purchase specifications" are:

a. The technical and descriptive requirements of a product and its intended use or application
b. The communication media between a buyer and seller
c. The basis on which bids are prepared
d. All of the above
e. None of the above

9. Check which of the following steps should be included in preparing each set of specifications? (Choose 3)

a. Write each section separately
b. Consult prospective bidders
c. Keep available drawings, reference materials, and worksheets
d. Review twice all items involved

10. The most important factor in any given set of specifications is to set out:

a. The purchase deadline for the item
b. The essential characteristics of the item
c. The intended use of the item
d. The intended price of the item

Answer Questions 11-14 by choosing from the list below:

a. Design specifications
b. Qualified products list
c. Comparisons of samples
d. Performance specifications
e. Brand name specifications

11. The three basic kinds of specifications are:

a b c d e

12. The kind of specifications most preferred in public purchasing is:

a b c d e

13. The kind of specifications to use for public contracting, publications and consultative works is:

a b c d e

14. The specification to use when time and resources are limited is:

a b c d e

15. A type of specification should be chosen:

a. For its ability to communicate the desired quality level of the needed product
b. If it is the easiest alternative
c. For its efficiency
d. None of the above

16. Good sources for preparing specifications are:

a. Your state and local statute books
b. State, federal, and professional publications
c. Persons in your city knowledgeable on the particular topic to which your specifications are related
d. All of the above

17. "Standard specifications" are used when:

a. They are required by federal law
b. Items are to be used for similar purposes by one or several different using agencies
c. Items are purchased on a one-time basis
d. None of the above

18. The factors to be considered in writing and maintaining standard specifications are: (Choose 3)

a. Gathering purchase records in a central location
b. Recording the frequency and volumes of each type
c. Keeping a limit on the number of specifications that are standardized
d. Having the specifications reviewed by using agencies and industry representatives.

19. The most important protector of a healthy and equitable public purchasing system is:

a. Establishing standard specifications
b. Prequalification of bidders
c. Open competitive bidding
d. Bid tabulation
e. None of the above

20. The Invitation for Bid (IFB) should contain:

a. Terms and conditions to be used by suppliers in preparing their proposals
b. Specifications
c. A cover sheet, including project identification
d. All of the above

21. When bids are solicited by dividing the bidders list into geographic regions, it is called:

a. Rotational bidding
b. Regional bidding
c. Competitive negotiation
d. None of the above

22. Written procedures of receiving bids should include: (Choose 3)

a. Requiring all bids be dated and properly identified
b. Keeping each bidder informed of all other bids received
c. Designating a secured box where all incoming bids can be placed
d. Requiring all bids be received by a preset deadline

23. The public bid opening should include:

a. Allowing all bidders plus the general public to know the nature and extent of bids received
b. Altering bids that do not conform to the purchaser's needs
c. Announcing who is awarded the contract
d. All of the above

24. In the sealed bid and award process, the purpose of evaluating bids is to:

a. Prequalify suppliers
b. Determine the lowest responsible bidder
c. Bond them
d. Determine which bidders should be deleted from the bidders list
e. None of the above

25. Bid bonding should be used:

a. On all bids
b. When openness is desired
c. When the reputation of the bidder is known to be bad
d. When the reputation of the bidder is unknown

26. The person given the authority to make the contract awards must:

a. Be certified by the state board of purchasing
b. Have a knowledge of all state and local statutes which relate to the process
c. Not know any of the bidders
d. None of the above

27. Given preferences to local bidders in evaluating bids is:

a. Argued as unconstitutional because it can be a barrier to interstate commerce
b. Promoted by local businesses and special interest groups
c. Costly
d. All of the above

28. Any bid submitted that does not conform to the specifications set out in the Invitation for Bid (IFB) should be:

a. Reprocessed
b. Rejected
c. Questioned
d. Used as standard

29. Emergency purchases should only be allowed:

a. In duplicate purchasing
b. Through permission of the central purchasing officer or someone in a higher position
c. Through permission of the seller
d. None of the above

30. Single source purchases are made:

a. When a certain seller is preferred by the purchasing agent
b. When only one department needs the item
c. When there is only one acceptable vendor able to furnish the needed item
d. All of the above

31. Competitive negotation can be used when:

a. Time is crucial factor
b. High technology items are involved
c. The purchase is for professional services
d. All of the above

32. Which of the following steps should be used in competitive negotiation? (Choose 3)

a. Preparing a list of qualified bidders
b. Calling each qualified bidder on the phone
c. Giving public notice of the intended purchase
d. Soliciting bids through a Request for Proposal (RFP)
e. Asking for sealed bids

33. "Cooperative buying" is:

a. Purchasing made from several bidders at one time
b. Several units of government getting together to purchase an item
c. A unit of government making a cooperative agreement with a seller
d. All of the above

34. In most local governments, who has final approval on all purchases?

a. The local elected or chief administrative official
b. The purchasing officer
c. The specification writer
d. None of the above

35. "Malfeasance" includes:

a. Conflicts of interest
b. Bribery
c. Kickbacks
d. All of the above

36. A conflict of interest occurs in a contract when:

a. The purchasing official and chief administrative official disagree on a certain point
b. The purchasing official and supplier disagree on a certain point
c. The personal interest of the government employee is involved
d. All of the above

37. Ignoring statutory requirements includes:

a. Making emergency purchases in non-emergency situations
b. Making many individual petty-cash purchases in place of one large competitive purchase
c. Making a purchase without going through the proper channels
d. All of the above

38. What type of items should be bought under term-contracting?

a. Items required year-around and used among all agencies
b. Items subject to disapproval
c. Items required on a seasonal basis
d. All items that are not bought under letter contracting

39. The things that should be included in a letter of complaint against a supplier are: (Choose 3)

a. Reason for complaint
b. Name of the person who made the complaint
c. Number of days allowed the supplier to comply with the requirements
d. Consequences of the supplier's nonconformance

40. The most effective method of inspecting items is to use:

a. A central inspection staff
b. A computerized testing program
c. A mechanical tester
d. Regional testing

41. Surplus items are:

a. In excess of present and near-future needs
b. Still useful and should not be labeled "scrap"
c. Both "a" and "b"
d. Neither "a" nor "b"

42. An item becomes surplus for one of three reasons: (Choose 3)

a. Its use has decreased
b. It is replaced by a newer item
c. A program is changed or discontinued
d. It falls under the standard definition of "scrap"

43. Surplus items can be identified best through:

a. The inventory process
b. Board meetings
c. The purchasing agent
d. The supplier

44. A surplus item may be disposed of by:

a. Transfer
b. Trade-in
c. Sale
d. All of the above

45. If you want to trade-in an obsolete item for a new one you should indicate such in:

a. The newspaper
b. The Invitation for Bid
c. A trade-in notice
d. The relating statute

46. In sale of surplus items, one condition that should always be made is:

a. The government provides no guarantees or warranties
b. If defects are discovered later, the sale will be made invalid
c. The buyer must be known by a member of the purchasing staff
d. Sealed bids should always be used

47. In taking inventory:

a. Always try to make a good estimate; it takes too much time to count every little item
b. Always count; do not make guesses
c. Count only big items, estimate on smaller ones
d. None of the above

48. The main function of warehousing is to receive, store, and disburse repetitive use items:

a. All at one time
b. From a central location
c. Yearly
d. According to statute

49. Storing items in one central warehouse:

a. Helps keep inventories in balance
b. Lets items be available when needed
c. Eliminates many small stockrooms
d. All of the above

50. Transactions that occur in a warehouse should be recorded:

a. Within five days
b. At the end of each day
c. As soon as each occurs
d. Before each is allowed to occur

51. Establishing a centralized purchasing authority is:

a. Placing control of all purchasing activities with one administrative unit within the local jurisdiction
b. Placing control of all purchasing activities with the state
c. Placing all surplus in a physical location central to all using agencies
d. None of the above

52. To encourage agencies to control purchasing under a centralized system, data should be kept on:

a. The budget
b. Items each using agency expects to purchase
c. Management information
d. All of the above

PURCHASING ANSWERS TO EVALUATION QUESTIONS

	Answer	Page Reference
1.	b	II.2.13
2.	b	II.2.12
3.	a c e	II.2.14
4.	a b c	II.2.17
5.	a	II.2.17
6.	d	II.2.17
7.	a b d	II.2.13
8.	a	II.2.19
9.	a c d	II.2.27
10.	b	II.2.27
11.	a d e	II.2.21
12.	d	II.2.22
13.	a	II.2.22
14.	e	II.2.21
15.	a	II.2.24
16.	d	II.2.26
17.	b	II.2.29
18.	a b d	II.2.29
19.	c	II.2.32
20.	d	II.2.32 and 33
21.	b	II.2.32
22.	a c d	II.2.36
23.	a	II.2.36
24.	b	II.2.38

	Answer	Page Reference
25.	d	II.2.38
26.	b	II.2.36
27.	d	II.2.39
28.	b	II.2.39
29.	b	II.2.41
30.	c	II.2.42
31.	d	II.2.42
32.	a c d	II.2.42
33.	b	II.2.43
34.	a	II.2.44
35.	d	II.2.46
36.	c	II.2.46
37.	d	II.2.47 and 48
38.	a	II.2.49
39.	a c d	II.2.54
40.	a	II.2.51
41.	c	II.2.55
42.	a b c	II.2.55
43.	a	II.2.55
44.	d	II.2.55
45.	b	II.2.56
46.	a	II.2.57
47.	b	II.2.60
48.	b	II.2.59
49.	d	II.2.59

	Answer	Page Reference
50.	c	II.2.60
51.	a	II.2.2
52.	d	II.2.9

AMP

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APPROVAL MANUAL

Manual Number Three
of
PROCUREMENT CODES AND PRACTICES
FOR LOCAL GOVERNMENTS

Developed by

KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT

MR. RALPH ED GRAVES, COMMISSIONER

Under Contract to

THE URBAN MANAGEMENT CURRICULUM DEVELOPMENT PROJECT

THE NATIONAL TRAINING AND DEVELOPMENT SERVICE

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Package II

APPROVAL MANUAL

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APPROVAL MANUAL

PRETEST

The attached questions directly relate to the information contained in the Approval Manual which you will be studying. Please answer each question by circling the correct answer.

You are not expected to know many of the answers at this time. It is only asked that you consider each question carefully and answer to the best of your ability.

Completing these questions will help you to determine your weaknesses and therefore to know those points on which you need to concentrate. You can find answers to these questions behind the Post Test in the Appendix.

APPROVAL MANUAL EVALUATION QUESTIONS

1. Centralized purchasing should be considered for your unit of government:

   a. If it is at all politically and financially possible
   b. If you have more than 200,000 population
   c. If you have a city manager form of government
   d. None of the above

2. In order that you, the "approval person" can help to establish the central purchasing authority, you must have a working knowledge of:

   a. Specification writing
   b. State and local purchasing laws
   c. Surplus property classification
   d. Contract types

3. Which of the following factors should be considered in forming a centralized purchasing system:

   a. Communication
   b. Efficiency
   c. Effectiveness
   d. All of the above

4. A bidders list is a list of suppliers who are:

   a. Possible bidders
   b. Bidders who have been awarded contracts
   c. Bidders prohibited from bidding
   d. All of the above

5. Establishing a bidders list includes:

   a. Preparing specifications
   b. Prequalifying bidders
   c. Receiving a bid from each bidder
   d. All of the above

6. Maintaining a bidders list includes:

   a. Changing item categories
   b. Resolving conflicts between bidders
   c. Deleting bidders from it
   d. None of the above

7. An activity that should be included in specification preparation is:

   a. Establishing a central control over specification preparation
   b. Choosing methods of testing to be used
   c. Establishing standard specifications for frequently purchased items
   d. All of the above

8. The three basic types of specifications are: (Choose 3)

   a. Design
   b. Performance
   c. Brand name
   d. Single

9. The best and most often required process of awarding contracts is:

   a. Formal sealed bids
   b. Single source purchases
   c. Emergency purchases
   d. Competitive negotiations

10. Competition will be more or less insured in the formal sealed bid process if:

   a. A legal notice is provided
   b. The bidder's list is used in a manner most favorable to competition
   c. Terms, conditions, and specifications of the IFB are set out
   d. All of the above

11. A "late bid" is one that is received:

   a. More than 24 hours later than the time designated for opening bids
   b. More than 2 weeks after the IFB has been issued
   c. After the time set for opening bids
   d. None of the above

12. Bid bonding should be used:

   a. On all sealed bids
   b. When openness is desired
   c. When the reputation of the bidder is known to be bad
   d. When the reputation of the bidder is unknown

13. In deciding who will receive the contract award, the approval person should base his decision on:

a. The suggestions of the purchasing agent
b. Sound reasoning and written guidelines
c. Political priorities
d. Alternate bids

14. Emergency purchases should only be allowed:

a. In duplicate purchasing
b. Through permission of the central purchasing officer or someone in a higher position
c. Through permission of the seller
d. None of the above

15. Single source purchases are made when:

a. When a certain seller is preferred by the purchasing agent
b. When only one department needs the item
c. When there is only one acceptable vendor able to furnish the needed item
d. All of the above

16. Competitive negotiations are used when:

a. Time is a crucial factor
b. High technology items are involved
c. The purchase is for professional services
d. All of the above

17. Lines of authority for review and approval of all purchases are established:

a. Through the guidelines of state and local statutes
b. By the purchasing agent
c. By the legal authority in the government
d. Through federal guidelines

18. One area in the purchasing organization where the purchasing agent has final approval responsibility is:

a. Awarding contracts
b. Maintaining the bidders list
c. Writing purchasing laws
d. Setting up the purchasing organization

19. Malfeasance includes:

    a. Conflicts of interest
    b. Bribery
    c. Kickbacks
    d. All of the above

20. A "conflict of interest" is:

    a. One of the parties involved in a contract holding a personal interest in its making
    b. A legislator acting as an agent for a corporation
    c. A government employee conducting an outside business and signing a contract with his own agency
    d. All of the above

21. Any contract involving a bribe or kickback should be:

    a. Reprocessed
    b. Rejected
    c. Questioned
    d. None of the above

22. The situation of a using agency ignoring purchasing rules:

    a. Is not as bad as a case of bribery or conflict of interest and should not generally be punished
    b. Should be reprimanded through the board or chief executive
    c. Is unpreventable and should be dismissed
    d. Is worse than bribery or conflict of interest and should be punished accordingly

23. As an approval person, you have no responsibilities in the areas of:

    a. Inspection and testing
    b. The bid and award process
    c. Surplus items disposition
    d. Both inspection and testing and surplus items disposition

24. Surplus items can result from:

    a. Decrease in use of an item
    b. An item being replaced by a newer one
    c. A program being replaced or discontinued
    d. All of the above

25. Warehousing is inventory control:

    a. In a central geographic location
    b. On the management level
    c. On the supplier level
    d. None of the above

INTRODUCTION TO THE APPROVAL MANUAL

As the local elected or chief administrative official, ususally you have final approval on purchases within a city or county. *The responsibilities and the activities necessary for you to oversee purchasing techniques and practices on your local government level are discussed in this manual.*

Because your unit of government differs so greatly from other units in size, structure, and governing ordinances your responsibilities may differ significantly from approval persons in other governmental units. Some of you do not have the necessary resources to carry out all the recommended functions and some of your governments are too small to warrant certain resources. It must be remembered though that limited resources only highlight the need for good controls, effective and efficient programs, and a proper management orientation. Actually, the size of a purchasing program has little to do with observing sound purchasing principles. Techniques for implementing the program can be expected to differ because of program size and other factors, but *principles* of good purchasing apply equally to all levels of government.

The package content adheres to the standard that "where there is centralization, openness, impartiality, and professionalism, government is well-served by public purchasing." This standard can be applied to purchasing programs at all levels of government.

The content is designed to let you, as an approval person, select and use guidelines appropriate to the needs of your position. It is up to you how you use the information.

CHAPTER I: CENTRALIZED PURCHASING PROCEDURES

There are three basic steps in establishing a central purchasing authority that will help to insure a successful purchasing system. First, if it is at all politically and financially possible, *consider the prospect.* No matter what the size of your government centralized purchasing may be practical for it. Centralized purchasing is sometimes thought to be limited only to states and larger units of local governments, but such is not so. Despite the size of your government, it could save your purchasing process time and money, allow you and other top officials to have quicker access to the system and better control over it.

Second, place a competent, hard working and trustworthy person in charge of the central authority who will insure that its principles are met. In doing so, your burden of responsibilities, as an approval person, will be reduced considerably.

Third, to accomplish these outcomes, include the following goals in your central purchasing authority policy.

1. Reduce and control the cost of purchasing supplies, equipment, and services

2. Service using agencies and vendors doing business with the government

3. Maintain a closer control over expenditures

4. Better utilize property purchased at public expense

*The three basic steps we have covered so far in establishing a central purchasing authority are:

1. _____

_____

2. _____

_____

3. _____

_____

The three basic steps are:

1. Deciding whether a central purchasing authority would be practical for your government and, if so, establishing one

2. Assigning a competent, hard-working and trustworthy individual to head the authority

3. Identifying the authority's goals and objectives

The organization of your central authority is dependent, of course, on the restrictions and allowances of your state and local statute books. Some states and localities impose strong regulations on the purchasing activities of their employees, while others barely address the issue.

In order that you, the "approval person," can help to establish the purchasing authority in the first place, you must have a working knowledge of your state and local purchasing laws.

*Go right now to both your state statute books and your local ordinance books (if you have some) and list below legislation that applies to establishing a central purchasing authority. Describe each law in two sentences or less.

State Statutes

1. _____

_____

_____

2. _____

_____

_____

3. _____

_____

_____

Local Ordinances

1. _____

_____

_____

2. _____

_____

_____

If you had trouble interpreting these laws, or even just finding them, then you can see the importance of having a direct line of communication with legal counsel in your government. One legal advisory person in your government should be assigned the responsiblity of advising both you, the advisory person, and the purchasing officer on the responsibilities and limitations of each function of the purchasing process. Such an advisory person should have a working knowledge of the legal system and a good liaison with the local government for which he is working. He can be the county or city attorney, or in a larger governmental unit, be legal counsel to the administration.

Whatever his position, it is important that you have a direct line of communication with him. Many legal questions, for instance, arise in establishing a central purchasing authority that require a definite answer. If you are able to easily contact a legal advisory person on individual questions that arise, your work will flow much smoother, and the system you establish should be much more efficient.

If you decide that a central purchasing authority should be established in your government, you also must decide the activities such an authority should be responsible for.

*Can you list three general activities for which a central purchasing authority should have responsibility?

1. _____

_____

2. _____

_____

3. _____

_____

The most important general activities to be included in a central purchasing authority's activities are:

1. Promoting legislation toward good comprehensive purchasing management

2. Researching and developing purchasing performance methods

3. Arranging the organizational structure to encourage effective performance and accountability

4. Documenting and continually updating purchasing practices and procedures

5. Increasing capability for innovation

6. Pursuing professional excellence and communicating such to agency heads, other government officials, and the public

It is important that activities included in centralized purchasing are adaptable to such a system, otherwise many problems may occur. In order to avoid potential problems, take into consideration whether or not the following factors will be improved as a result of placing each activity into central purchasing: (a) communication, (b) efficiency, (c) effectiveness, and (d) organization.

Looking at your own purchasing system (or a fabricated one) choose an activity and decide if its placement in central purchasing authority would be advantageous to the system. (Explain how the factors a-d will or will not be improved.)

Name of activity _____

_____

_____

Advantages or disadvantages in:

a. Communication _____

_____

b. Efficiency _____

_____

c. Effectiveness _____

_____

d. Organization _____

_____

Again, centralized purchasing is not appropriate for every governmental unit, but despite the size of your unit, *you should give it strong consideration.* A central authority can not only maintain overall legal responsibility for implementing the purchasing program, but can establish the policies, procedures, and controls for delegation.

CHAPTER II: BID AND AWARD PROCESS

The "bid and award" process is the formal process of seeking out a product and buying it. This responsibility rests with either the individual using agencies or the central purchasing authority in your government. The total process can be divided into five basic functions:

1. ESTABLISHING AND MAINTAINING A BIDDERS LIST
2. PREPARING SPECIFICATIONS
3. INVITING AND RECEIVING BIDS
4. EVALUATING AND AWARDING BIDS
5. WORKING WITH ALTERNATIVE PROCEDURES TO THE BID AND AWARD PROCESS

1. ESTABLISHING AND MAINTAINING A BIDDERS LIST

A bidders list identifies suppliers of various goods and services as possible sources of bids and proposals. It provides either the central purchasing authority or each using agency with a source from which qualified bidders can be solicited. Establishing and maintaining the bidders list is the responsibility of those that use them (either the using agency or the central purchasing authority). You, as the approval person, should be involved only in legal or administrative conflicts that arise with the list.

The process of establishing and maintaining a bidders list includes the activities of prequalifying bidders for the list and deleting bidders from it. Since the bidders list determines who will receive Invitations for Bids (or who will be asked to make a bid on a certain item or project), and you are the person who has final approval on the Invitations for Bids, it's important that you know the list is being properly maintained.

*Do you know whether or not your purchasing authority or using agencies prequalify bidders for their bidders list? Yes ___ No ___

*If yes, what is the criteria they use to prequalify bidders?

1. _____

2. _____

Criteria used most often to prequalify bidders include:

1. Financial standing
2. Reputation
3. Facilities for production
4. Distribution and service capabilities
5. Length of time successfully in business

Do you know which of these are used by your purchasing authorities? In order to keep tabs on the bidders list you should remember this information.

2. PREPARING SPECIFICATIONS

Specifications are the technical requirements of a product and its intended use or application. They are prepared by the purchasing agent to communicate the description of the product to the supplier(s). Usually they are attached to the Invitation for Bids so that any supplier who wishes to make a bid knows exactly what he will be required to do if he is awarded the contract. Specifications also serve as a public record allowing the public to see exactly what is being purchased. Activities that should be included in specification preparation are:

1. Establish a central control over specification preparation

2. Choose to use, for each set of specifications prepared, one of three types: design, performance, or brand name

3. Identify the essential characteristics of items to be purchased in the written specifications

4. Choose methods of testing to be used

5. Establish standard specifications for frequently purchased items

Though specifications usually are prepared by the purchasing agent, they should be subject to your approval. Therefore you should be familiar with some basic principles of the above activities.

For example, in establishing a central control over specifications, your influence is mandatory. Even if you have decided that a total central purchasing authority would not be appropriate for your government, a central control over specifications may still be practical.

*Does you government presently have a central control over specifications?

In many governmental units, each using agency prepares the specifications for the items it would like to purchase. Though this process is fine for smaller governmental units, larger units will waste much time and effort in duplicating specifications for items if they do not centralize the process.

In setting up a central authority, the complete list of responsibilities must be set forth in writing. This should include the *conditions* under which specifications must be approved by you and/or by other officials in the government. This process, of course, must abide by legal regulations imposed by both state and local statutes.

*Refer now to your state and local (if you have any) statute books, and list below any laws that relate to *specification writing*. Describe each in two sentences or less.

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Though the specifications prepared must abide by legal restrictions, they should not be made *unreasonably restrictive*, or the number of suppliers who can make bids on an item will be limited. Other than the legal guidelines, the *essential characteristics and essential design features of an item* always should be covered in the specifications.

There are three types of specifications with which you should be familiar: design specifications, performance specifications, and brand name specifications. Each of these allows for a different degree of restrictiveness in setting forth the essential characteristics of an item.

Design specifications describe the detailed characteristics that an item must possess, even how it should be manufactured. They are the most restrictive specifications and should be used for public contracting (roads, buildings, etc.), publications, consultative services, or anything that requires prescribed design features.

Performance specifications describe the capabilities necessary to satisfy intended use of the product or how the product should perform. This is the most preferred type of specification today in public purchasing. It does require close communication between the using agency and the purchasing authority, but it usually results in the best method of determining the lowest responsible bidder.

Brand Name specifications cite a brand name, model number, or some other designation that identifies a specific product of a manufacturer as an example of the desired quality level. Usually any item equal to or better than the quality level stated is acceptable. Brand name specifications are not usually good specifications to use except when time and resources are limited, or an item of low dollar value is purchased. Though they should indicate beyond a doubt that the brand name mentioned is not the preferred product, but only an example, they still tend to discourage competition and reduce chances of equal opportunity for bidders.

The following is a sample set of specifications. Read them thoroughly and then answer the questions following:

SPECIFICATIONS

SPECIFICATION: Paper, Toilet Tissue (Institutional and Industrial)

KENTUCKY STANDARD NO: 8540-1

1. SCOPE

1.1 This specification covers two (2) types of toilet tissue. Agencies are to supply Supplemental Data to this specification as specified in 6.1

2. 2.1 This specification covers the following types:

Type I - Single-Ply Roll Tissue

Type II - 2 Ply Roll Tissue

3. REQUIREMENTS

3.1 Material - The toilet tissue shall be made from clean pulp; shall be unglazed, soft, clean, non-abrasive, and of even formulation; free from slivers, dirt breaks, wrinkles, holes, and such other imperfections as would affect either appearance or serviceability or both; shall be rectangular without ragged or irregular edges; shall have a maximum of 0 percent ground-wood fiber. Tissue shall be deemed safe for use in septic tanks and must readily break-up in water when agitated. It shall be the manufacturer's first-line product.

3.2 Physical Characteristics, Type I

Type I - Paper, Toilet Tissue, Facial Quality, Single-Ply Roll, White, Sheet Size 4½" x 4½", 1000 Sheets Per Roll, 96 Rolls Per Case, Individually Wrapped, Standard Core.

Roll Construction - Roll tissue shall be evenly and tightly wound on a stiff round paperboard core having an inside diameter of 1-3/8 to 1-3/4 inches, sufficiently rigid to prevent collapse under ordinary conditions of transportation and usage.

Brightness of Paper - Shall be a minimum of 68% (Test Method T452, Federal Specification UU-P556)

3.2 Physical Characteristics, Type I (Continued)

Basis Weight - Shall be a minimum of 11.0 lbs.

Single-Ply Perforation - Tissue roll shall be perforated at not less than 4¼ inch nor more than 4-5/8 inch intervals and shall average not less than 4,500 inches per roll (1000 sheets perforated at 4½ inch intervals or 1,060 sheets perforated at 4¼ inches). No single roll shall be less than 4,375 inches in length.

3.3 Physical Characteristics, Type II

Type II - 2 Ply, Bleached, White, Sheet Size 4½" x 4½", 500 Sheets Per Roll, 96 Rolls Per Case, Individually Wrapped Standard Core.

Roll Construction - Roll tissue shall be evenly and tightly wound on a stiff round paperboard core having an inside diameter of 1-3/8 to 1-3/4 inches, sufficiently rigid to prevent collapse under ordinary conditions of transportation and usage.

Basis Weight - Shall be a minimum of 9.5 lbs.

2 Ply Perforation - Tissue roll shall be perforated at not less than 4-3/8 nor more than 4-5/8 inch intervals and shall average not less than 500 double-ply sheets per roll and no single roll shall contain less than 488 sheets.

Brightness of Paper - Shall be a minimum of 68% (Test Method T452, Federal Specification UU-P-556).

4. SAMPLING, INSPECTION AND TEST PROCEDURES

4.1 Sampling - A sample package shall be furnished for each type asked for in the Invitation to Bid.

4.2 Inspection - As Required

4.3 Testing - Shall be performed by practical application.

5. PREPARATION FOR DELIVERY

5.1 Packaging

5.1.1 Each individual package shall be firmly wrapped to resist deformity in handling.

5.1.2 Shall be packaged and packed according to the manufacturer's practice in a manner acceptable to common carrier for safe transportation to destination as specified.

5.2 Marking - Unless otherwise specified, shipping containers shall be marked with the name of the material, the size, type, and quantity contained therein as defined by the contract or order under which shipment is made, the number of the contract or purchase order.

5.3 Labeling - Shall show product name and address of manufacturer.

6. NOTES

6.1 Supplemental Data - Requisitioning Agency shall specify the following:

Type and Quantity

6.2 Only established branded products that meet or exceed the quality level of the approved brands listed herein shall be considered for inclusion in this Acceptable Brands List.

6.3 Only registered manufacturer's brand names will be considered. Private brands will not be considered.

6.4 Specifications - Additional copies of this specification may be obtained by writing to the Standard and Specifications Section, Division of Purchases, New Capitol Annex, Frankfort, Kentucky 40601.

1. What is the type of specifications used (design, performance, or brand name)? _____

2. Do they properly set out the essential characteristics of the item to be purchased? Yes ___ No ___

3. Has a reasonable yet legal (according to *your* state and local statutes) degree of restrictiveness been applied? Yes ___ No ___

Why or why not? _____

_____

_____

The writing of specifications and Invitations for Bids should be watched closely by you as the approval person. Improper development of either of them can affect greatly the award process, in either an unfair or inefficient manner. So, be able to trust your purchasing agent to do a good job; at the same time, know the regulations and alternatives yourself and also maintain good communication with the legal advisory person in your government.

3. INVITING AND RECEIVING BIDS

This process, which includes inviting, receiving, opening, and tabulating bids, is the basic element of the bid and award process. Statutes and regulations generally require local governments to use this *total process* to insure open and competitive bidding. Though there are alternative methods of awarding contracts to a supplier (comprehensive negotiation, emergency purchases, etc.) the sealed bid and award process generally is the best and the one most often required. For this reason, we will cover the sealed bid and award process first and most elaborately, and touch upon other purchasing methods later.

*According to your state and/or local laws, what are the conditions under which a formal sealed bid purchase should be used?

Most laws stipulate that any purchase over a certain dollar amount be subject to formal sealed bids (for instance, any purchase over $200). Larger amounts of purchases are best for formal bids, since the formal bid and award process does require substantial time and cost.

*Now, while you are looking through your statute books, cite and describe briefly any other statutes that relate to *formal purchases*.

Statute _____

Description _____

Statute _____

Description _____

Statute _____

Description _____

Statute _____

Description _____

Two tasks to be included in processing a formal (sealed bid) purchase are:

TASK A: Insuring competition

TASK B: Establishing bid opening and tabulation procedures

TASK A: Insuring competition

Requirements of all purchasing statutes relating to the bid and award process should be based upon competitive principles. Top-level management also plays an important role in assuring that open competition is maintained throughout the purchasing process. *Competition* is present when two or more vendors are allowed to secure the business of a third party by offering the most favorable price, quality, and service. If the purchasing agent abides by the following steps of the bid and award process, competition will more or less be insured:

1. Provide a legal notice

2. Use the bidders list in a manner most favorable to competition

3. Set out the terms, conditions, and specifications of the proposal in the Invitations for Bids (IFB)

Steps #1 and #2 are generally the sole responsibility of the purchasing agent or the using agencies. But the final responsibility of Step #3--setting out the terms, conditions, and specifications of the Invitations for Bids (IFB)--lies with you as the approval person.

The construction of the IFB is critical to competition, because the entire tone of the transaction and the future course of the resulting contract stem from it. Sufficient review time must be given the IFB or else competition could be restricted and the transaction could be subject to legal and procedural problems. The following is a list of the terms and conditions that should be included in the IFB:

1. Cover sheet, including project identification
2. Specifications
3. Types of bids required (lump-sum, itemized unit, etc.)
4. Time and place where bids will be received and opened
5. Special conditions
6. Conditions under which proposals will be accepted or rejected

A sample IFB is in appendix 1. Refer back to it now and go through each separate item to make sure you understand it. The above eight items are only suggested to be used in IFB. However, they can be used as a checklist when reviewing the IFBs so that you know what is missing and why.

TASK B: Establishing Bid Opening and Tabulation Procedures

The central purchasing authority for each using agency must establish formal procedures to safeguard all bids until the time set for opening them. Public bid openings is the rule for sealed bids, since each bidder relies on the purchaser to assure that the price is not disclosed prematurely. All responsibilities and procedures of bid receipt and control should be set forth in writing under your guidance.

4. EVALUATING BIDS AND AWARDING CONTRACTS

After all bids have been received and tabulated, they must be formally evaluated and the contract awarded. The following tasks should be included in this process:

TASK A: Establishing bid and award authorities

TASK B: Identifying and dispensing of late or erroneous bids

TASK C: Determining if bid bonding is required

TASK D: Evaluating bids and awarding contracts

TASK A: Establishing bid and award authorities

To establish who has what responsibilities in evaluating bids and awarding contracts, it is necessary first that you have a working knowledge of all state and local statutes relating to the process.

*Go now to your state and local statutes books and list any and all statutes that relate to the bid evaluating and award process. Describe each briefly. (If you do not have local statute books, do you have any idea how to locate such statutes?)

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

You cannot begin to establish guidelines or write policy for this or any other process until you know your legal responsibilities and limitations. Again, you can see the importance of having a direct line of communication with the legal advisory person in your government in order that he may help you to establish the program initially and answer any questions arising later on.

Openness, impartiality, and resonableness should be incorporated into the standards of this process. *Openness*, means that evaluation procedures should be set out in writing and be made available to all prospective buyers and to the general public. It also means that evaluation criteria be thoughtfully developed and stated clearly in the IFB's. *Impartiality* requires that all bidders be treated equally in

the evaluation process so that favoritism does not result. Reasonableness requires that the process be orderly.

Written policy should include guidelines for the following topics and functions: (1) responsibility of bidders, (2) responsiveness of bidders, (3) "preference" in awarding contracts, (4) bid bonding, (5) late or erroneous bids, and (6) awarding contracts.

To set up the policies in these areas, meet with your purchasing agent or with the person responsible for these functions in each using agency. Such a person or persons should know the principles to apply and the methods of establishing such policies. He needs your guidance though in dealing with political and administrative priorities or standards (especially in areas such as "preference", "bid bonding", etc.)

TASK B: Identifying or dispensing of late or erroneous bids

A *late bid* should be identified as any bid received at the place designated after the time set for opening of bids. The best policy is to reject all late bids regardless of the circumstances.

An *erroneous bid* is usually one that includes a mathematical error, or it could be one that does not conform to the IFB. The best policy for these situations is to reject any such bid.

There are exceptions and alternatives for dealing with late or erroneous bids. *These should be determined by the guidelines of your statutes and the judgement of your purchasing officer(s).*

TASK C: Determining if bid bonding is required

Bid bonding should be used in instances where the reputation of the bidder is not well established or not known. It should not be used on a regular basis for the purchase of goods and services, but only in special instances such as public works contracting. Bid bonding should never be used in place of a good prequalification system. Procedures and conditions under which bid bonding is used must be pre-established in your purchasing policy statement.

TASK D: Evaluating bids and awarding contracts

The purpose of evaluating bids is to determine the "lowest responsible bidder meeting specifications", or "lowest and most advantageous" bidder. Despite the wording, the award usually is made for the bidder whose bid is lower in unit price, total cost of operation, or value per dollar than any other bidder whose reputation, past performance, and business and financial capabilities satisfy the government's needs. (Now you can see the importance of pre-establishing the guidelines in this area.) The person who has the authority to make the awards can use his own discretion in determining the successful bidder, but such a decision must be based upon sound reasoning and written guidelines.

Such guidelines should include policies for the determination of the following: who submitted the lowest bid, whether the low bid is responsive, and whether the low bid is responsible.

Once the lowest responsive and responsible bidder has been determined, notification of award should be made in writing to the successful supplier and all other competing bidders.

5. WORKING WITH ALTERNATIVE PROCEDURES TO THE BID AND AWARD PROCESS

You will recall that the sealed bid and award process, generally is the best means of awarding a contract to a supplier, and sometimes the only legal means. Under certain circumstances other acceptable methods are permitted in most local governments. These include:

1. Emergency purchases
2. Single-source purchases
3. Competitive negotiations

*Go now to your state and local statute books to find out if any of the above three purchasing methods are disallowed in your government. List below the statute and the purchasing method(s) disallowed.

_____

_____

_____

_____

_____

_____

_____

_____

Let's go through the three purchasing methods, one by one.

Emergency purchases--Emergencies are the most common special type of purchase for which the bid and award process is permitted to be by-passed. As a rule, emergency purchases should only be allowed through permission of the central purchasing authority, or, if your time permits, through your approval. This is to safeguard against unnecessary, corrupt, or duplicate purchases. The item requested to be purchased as an emergency, for instance, might already be on hand; a central purchasing authority would know this. A central authority would also be able to consolidate an order of several individual requests of the same item.

If the purchase of an item is an immediate emergency, agency heads should be allowed to make them under special conditions. Records should be kept on the item(s) as to types and quantities purchased, vendor's name, and disposition of the item.

Single-source purchases--Single-source purchases are made when there is only one acceptable vendor able to furnish a certain item or service. Again, deciding when single source purchases can be made should be the responsibility of the purchasing officer (with the help of the using agency). In order to avoid making single source purchases that results from a preference for a particular company, the purchasing officer should ask the following questions before he allows one to take place:

1. Is there no responsible competition for the item

2. Is the item necessary to the operation of the agency

3. Is the object really one-of-a-kind

4. Is the vendor selected the only one capable of supplying the product

5. Is there a patent on the product

Competitive negotiations--Competitive negotiations involve informal discussion and bargaining to reach an agreement on the proposed purchase of an item. It is usually used in situations where high technology items are involved (for instance, data processing or communications systems) or when the purchase is for professional services.

The main difference between the sealed bid and award process and competitive negotiation is that sealed bids are not used in the latter. Most other functions are the same, however, the purchaser should: prepare a list of qualified bidders; give public notice of the intended purchase; and solicit qualified bidders. A Request for Proposal (RFP) may be used instead of an IFB. It should include the description of the item, the evaluation criteria, delivery dates, time frames, and any other necessary information. Usually price is not the major criterion for award, but all the above factors should be taken into consideration.

CHAPTER III: PUBLIC PURCHASING APPROVAL

Lines of authority for review and approval of all purchases should be established in your government. This process normally is designed according to the guidelines of state and local statutes. The process includes the following functions:

1. ESTABLISH LINES OF AUTHORITY AND PROCESSES FOR FINAL APPROVAL OF PURCHASES

2. KNOW AND UNDERSTAND THE RESPONSIBILITIES OF THE PURCHASING AGENT

3. ESTABLISH PROCEDURES TO PROTECT AGAINST MALFEASANCE OF GOVERNMENT EMPLOYEES

4. INCORPORATE PURCHASING CONSIDERATIONS INTO MANAGEMENT DECISIONS

1. ESTABLISH LINES OF AUTHORITY AND PROCESSES FOR FINAL APPROVAL OF PURCHASES

The approval process in public purchasing normally is established through the guidelines of state and local statutes.

*To refresh your memory, refer now to your state and local statute books and list those regulations referring to approval in public purchasing.

Statute _____

Description _____

Statute _____

Description _____

Statute _____

Description _____

The usual process goes something like this. After bids are received, tabulated, and evaluated the lowest and best bid should be submitted to you. Your responsibility for evaluation includes checking the bid's accuracy, legality, and price appropriateness (and more detailed factors if your time permits). If you decide to approve the bid, send it back

to purchasing. If you do not want to approve it, explain why (in writing if possible) to the purchasing agent and instruct him to either (a) choose another bid, (b) deny the purchase entirely, or (c) solicit bids again.

2. KNOW AND UNDERSTAND THE RESPONSIBILITIES OF THE PURCHASING AGENT

Public purchasing, as a business activity, requires the knowledge and training of a good purchasing specialist. This specialist, as the head of the purchasing department, should conduct all negotiations affecting purchases, from specification writing to deliveries. Such is his responsibility.

Your responsibility, as an approval person for bids, is to understand the duties of the purchasing agent, comprehend the constraints to which he is subject, and be able to help him with his problems.

This manual will help you to understand your purchasing agent's functions. If you need to know any of his functions that aren't covered in this manual you should seek out this knowledge on your own.

Following is a list of activities that should be included in the total purchasing cycle, along with the name of the person(s) who should be responsible for each. As you go through each activity, determine if it could work successfully in your purchasing program.

1. User department prepares three copies of purchase requisition, keeps one copy for file, and sends two to purchasing.

2. Purchasing checks the requisition to see if it is accurate. If not accurate, both copies are sent back to user department.

3. If accurate, purchasing checks to see if funds are available. If not available, copies are sent back to user department.

Note: Accounting, or a budget division, can also determine the availability of funds. If a budget is in use, it will be referred to in order to see if the purchase is budgeted.

4. If funds are available, purchasing keeps one copy of the requisition for file, sends one copy to accounting, and determines whether regulations require bids to be solicited.

5. If bids are not required, price quotations are obtained by phone, written inquiry, or from catalogs, and a purchase order is prepared.

6. If bids are required, bid quotations are requested.

7. Bids are received and tabulated, and the lowest and best bid is submitted to the commission or council for approval.

8. The commission or council evaluates the recommended bidder and decides whether to approve. If not approved, either (a) another bid is

approved, (b) no bids are accepted and the purchase denied, or (c) purchasing is instructed to solicit bids again.

9. If bid is approved, purchasing prepares purchase order.

10. Purchasing keeps one copy of purchase order for file, and sends two copies to selected vendor, one to user department, and one to accounting.

11. Vendor supplies ordered goods or services, and submits an invoice along with one copy of purchase order, keeping the other copy for file.

12. The user department and purchasing inspect the goods to see if specifications have been met. If they have not been met, goods are sent back to the vendor, or he is otherwise directed to comply with the order.

13. If specifications are met, receiving report is prepared in triplicate by user department, one copy is kept for file, and two are sent to purchasing.

14. Purchasing verifies that receiving report and purchase order coincide, keeps one copy for file, and sends a copy to accounting.

15. Accounting verifies that purchase order, invoice, and receiving report coincide, and pays the bill.[1]

*Activity #8 is an approval function and, according to what has been said, is completely your responsibility. But, can you think of other areas in the purchasing organization where, not you, but the purchasing agent, has approval responsibility? _____

_____

_____

_____

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_____

Areas in which purchasing agents must have the final approval are:

1. Setting up fiscal control procedures

2. Implementing requirements under federal grants

3. Maintaining the bidders list

3. ESTABLISH PROCEDURES TO PROTECT AGAINST MALFEASANCE OF GOVERNMENT EMPLOYEES

Malfeasance (as we all know) is *misconduct by a public official.* Such misconduct in public purchasing can include conflicts of interest, bribery and kickbacks, and not following statutory requirements. We will deal with each type of misconduct separately, stating what it is and how it should be handled. Remember, any involvement with such misconduct should be covered in specific statutes or by detailed regulations. If such do not exist in your government, help establish them!

Conflicts of interest

A conflict of interest is when one of the parties involved in a contract holds a personal interest in its making. We must presume that a contract could not be awarded objectively if someone involved has self-interest in it, so in all such cases, the contract must be determined void.

Is "conflict of interest" defined anywhere in your government's laws or regulations? It should be! If the conditions under which a conflict of interest should be declared are not well established in writing, then how can they be properly prevented?

The following are the types of things that should be labeled as being a conflict of interest:

1. Conducting an outside business and signing a contract with your own agency or another government agency involving the business.

2. Being an agent, partner, board member, officer, or employee of a corporation while acting as a legislator, non-civil-employee or a purchasing employee. (Spouses of these employees should also be under these prohibitions.)

Protection in this area is absolutely necessary; since conflicts of interest can destroy the integrity of the purchasing process. Every contract must be thoroughly examined by both you and by the purchasing agent to determine if a conflict of interest is present. *Every contract involving a conflict of interest should be declared void.* If the government has already lost money because of the contract, the public employee should be charged a penalty of the amount of his profit plus the amount the government lost.

Other penalties that some local governments use include: civil damages of three times the loss to the government; criminal penalties of a minor felony; removal from office; and/or a permanent bar from holding office or employment with the government.

Remember that even if a contract involving a conflict of interest might be most advantageous for the government, it is still not right. It *must* be declared void. A contract should also be declared void even if the public official who holds the interest disqualifies himself. Disqualifying himself from acting on the contract does not mean he cannot influence other persons' actions on it.

Kickbacks and bribes

Kickbacks and bribes can be defined as promises, obligations, contracts for future reward, gratuities, contributions, loans, reward rebates, gifts, money, or any other things of value.

It should be presumed that when an interested party makes any gift to purchasing personnel, the gift is made and received for the purpose of influencing purchasing decisions. This also holds true for any other person who is involved in the purchasing process.

Acts of giving and/or accepting something of value to influence a contract award should be criminal offenses whether the exchange is intended or not, and the contract influenced should be declared void. The government officials who are involved should be held financially liable for any losses to the government because of the bad contract. In many local governments, government officials and employees who can influence awards are bonded so the government can recover from any financial damage if they should accept a bribe or kickback.

Again, any contract involving a bribe or kickback should be declared void, and the government should also be released from any other current or future financial obligations to the firm. However, if the firm can prove that the agent who initiated the kickback or bribe acted entirely on his own, without management being involved, then the firm should be allowed to continue its business with the government.

Ignoring statutory requirements

If a using agency or even your purchasing agent ignores the purchasing laws and/or rules, the situation may not seem to be as bad as a case of bribery or conflict of interest. So when such unlawful practices are discovered, they are sometimes not punished and the problem repeats itself. And if this occurs, the integrity of the system may be jeopardized.

Examples of ignoring statutory requirements are purchasing agents or using agencies ordering an item without going through the proper channels, making emergency purchases in non-emergency situations, or making many individual petty-cash purchases in the place of one large

purchase under competitive bidding. If they should make a constant practice of such activities without being reprimanded, your total purchasing system is threatened.

If an illegal purchase is discovered before payment, payment should be stopped and the person responsible should be given a firm warning. If the illegal purchase is not discovered until after payment has been made, a strong reprimand from the legislature, board, or chief executive is in order. This will not solve the immediate problem, but it will likely prevent it from happening again.

4. INCORPORATE PURCHASING CONSIDERATIONS INTO MANAGEMENT DECISIONS

The daily decisions that you make as a locally elected or chief administrative official sometimes seem totally unrelated. As you know, however, most decisions do overlap and are interrelated. Thus your general management decisions may affect the purchasing function.

Almost every decision, in fact, made by state and local governments affects purchasing and materials management and conversely, the activities of purchasing affect many management decisions. It would be wise therefore, that purchasing participate in the early stages of management planning. Purchasing can, for example, forecast costs of specific programs as they relate to services and materials. Purchasing can also contribute useful information on market conditions, materials availability, and technological advancements. In addition, purchasing can be asked to help in facilities planning, forecasting needs for operating supplies, furniture and fixtures, fuel equipment, machinery, etc.

Purchasing can also *benefit* from being involved in the management level planning process. Its involvement can provide information about government decisions and trends. Long-range plans can be translated into future requirements, work loads can be scheduled, and attention can be given to strategies best for future market conditions.

*Can you name a management activity, other than the ones mentioned above that would benefit the purchasing agent (as well as management) to be involved? Explain how the activity would benefit both you and the purchasing agent.

_____

_____

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The approval process is for the purpose of making final awards on any transactions where there are significant dollar amounts. There is no question that a local government needs to have a defined system of lines of authority for review and approval of purchases. This does not mean, however, that the approving authority needs to have first hand involvement in award, but only that *he should have monitoring or auditing authority in the total purchasing process.*

FOOTNOTES

[1] Purchasing for Local Governments, Institute of Government, The University of Georgia, p. 14-15.

CHAPTER IV: INSPECTION AND TESTING PROCEDURES

Inspection and testing is examining items critically to determine whether they have been received in proper quantity and condition and conform to agreed specifications. Until it is assured through an inspection program that satisfactory delivery has been made on an item, the purchasing process is not complete.

There are various ways of handling an inspection and testing program. In most purchasing departments, inspection is basically the responsibility of the individual buyer who placed the order.

As an approval person, you have no responsibilities in the area of inspection and testing. It is good for you to know, however, what the responsibilities are of the purchasing agent in a centralized purchasing system. The total inspection and testing program can be divided into the following responsibilities:

1. Organizing the inspection program
2. Publishing an inspection manual
3. Establishing conditions and written procedures for inspection
4. Coordinating testing of similar items and sharing test results

A centralized inspection staff is probably the most effective method of inspecting items, but is not usually the most efficient in a small government. In such governmental settings inspection functions should be given to the smaller units of government with central purchasing making spot checks in unusual circumstances.

*Who in your governmental unit is responsible for inspection and testing of items received?

_____

_____

_____

*If you presently do not have an inspection and testing program, do you think such a program would benefit your purchasing program?
Yes ____ No ____

Why or why not? _____

CHAPTER V: SURPLUS ITEMS DISPOSITION

Surplus items are those that exceed present and near future needs, but are still useful. Surplus can result from:

1. The decrease in use of an item
2. An item being replaced by a newer one
3. A program being replaced or discontinued

An effective program of disposing of surplus items depends upon being able to identify what is surplus and what is scrap material. This is usually done through an inventory process controlled by central purchasing. Again, the *central purchasing authority should take complete responsibility for identifying surplus and establishing methods for its disposition.* You, as an approval person, need only to know the basic alternatives in the process. Once an item is labeled surplus, there are three ways to dispose of it: *transferring, trading it in, or selling it.* The method chosen depends on whether it is surplus or scrap, and whether or not it is needed by other agencies.

CHAPTER VI: WAREHOUSING

Warehousing is an extension of surplus items disposition. It is actually inventory control in a central geographic location, and it has the potential of cutting overhead costs, making materials available when needed, and reducing complaints from using departments or services.

The total warehousing process includes two basic functions:

1. Receiving, storing, and disbursing *repetitive use items*

2. Receiving, storing, and disbursing *surplus scrap*

Not all local governments would benefit from a warehousing system, but the percentage of those now using warehousing should definitely be increased. Any jurisdiction with a population of 50,000 or more and responsible for operating its own electrical, water, and sewer facilities would experience savings of many kinds by using a warehousing system. Without the named utilities, 100,000 would probably be the population criterion; with one or two of the utilities, 75,000 would be the criterion.

If you do not presently have a warehousing system in your government's purchasing program, and you strongly believe that you should, discuss the possibility with your purchasing agent. It is to the benefit of not only the purchasing department, but even more so to all other departments in your government.

CHAPTER VII: APPENDIXES

INVITATION TO BID
Project #2139

Date Issued: March 1, 1977

Vendor Name and Address: Parker and Sons, Architects
Second Street
Lexington, Kentucky
Phone: 606-252-4031

Bid opening date: May 14, 1977

Time: 10:00 A.M.
Location: Room 208
First National Bank Building
Jonesville, Kentucky

Sealed bids must be received by this date.

You are invited to bid on the following:

Jonesville Municipal Building-a four-story, thin-shell concrete, building, 300 feet in diameter; including electrical work and plumbing

Terms and conditions:

1. Bids must be mailed or delivered to the Board of Commissioners, First National Bank Building, Box 2123, Jonesville, Kentucky, 42031.

2. Bids must be submitted in ink or on a typewriter and signed in ink; they must be presented in a sealed envelope with the Bid number and Date of opening written in the lower left-hand corner.

3. Any company failing to respond to two consecutive invitations or four courtesy responses may, at the discretion of the Board, be dropped from the bid list.

4. All proposals must be on a lump sum basis. Please quote your single best net price. Bids must be firm, containing no escalator clauses.

5. Delivery date is October 1, 1978.

6. Bid bond in the amount of five percent of the proposal must accompany each proposal.

7. Any product delivered that does not meet specifications as approved by the Board, or does not produce the effect required, shall be returned at the company's expense. And the company shall refund to the city any money which has been paid them for the product.

8. The Board of Commissioners reserves the right to accept or reject any bid according to the best interests of Jonesville. A bid may be awarded in part or whole according to the best interests of Jonesville.

G L O S S A R Y

Acquisition program--Acquiring of materials by purchases; should encompass planning and scheduling, designing Invitations for Bids, soliciting bids, receiving, opening, and evaluating bids, making awards, expediting, and contract administration.

Alternate bid--A bid submitted in knowing variance from the specifications. Such a bid is only acceptable when the variance is deemed to be immaterial.

Award--The presentation of a purchase agreement or contract to a bidder; the acceptance of a bid or proposal.

Bid--The instrument by which a supplier presents item specifications and prices for a buyer.

Bid and award process-The process of seeking out a product and buying it.

Bid-award file--A file that is divided into commodity and item sections each of which contains listings of who was solicited for individual bids, what each response was, and other information. The bid-award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

Bid bond--An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to sign the contract as bid.

Bid deposit--A sum of money or check, deposited with and at the request of the government, in order to guarantee that the bidder (depositor) will, if selected, sign the contract as bid. If the bidder does not sign the contract, he forfeits the amount of the deposit.

Bidders list--A list maintained by the purchasing authority setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

Brand name specification--A specification that cites a brand name, model number, or some other designation that identifies a specific product as an example of the quality level desired.

Budget data--Information contained in an annual budget submitted by using agencies and approved by management.

Central purchasing authority--The administrative unit in a centralized purchasing system with the authority, responsibility, and control of purchasing activities.

Collusion--A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.

Commodity--An article of trade, a moveable article of value, something that is bought or sold; any moveable or tangible thing that is produced or used as the subject of barter of sale.

Commodity classification groupings--Groupings, each representing a particular function with which a group of products is commonly associated.

Competitive bidding--The offer of prices by individuals or firms competing for a contract, privilege, or right to supply specified services or merchandise.

Competitive negotiation--A technique for purchasing goods and services, usually of a technical nature, whereby qualified suppliers are solicited, negotiations are carried on with each bidder, and the best offer (in terms of performance, quality of items, price, etc.) as judged against proposal evaluation criteria, is accepted; negotiated award.

Conditions of sale--A statement containing conditions of items and list of known defects for something to be sold; makes clear that responsibility for inspection rests upon buyer.

Cost-savings analysis--The process of evaluating the difference between spot purchasing and volume buying.

Design specifications--A purchase specification delineating the essential characteristics that an item bid must possess to be considered for award and so detailed as to describe how the product is to be manufactured.

Disposition--Acting to remove from the premises and control of a using agency goods that are surplus or scrap. Disposition can be accomplished by transferring, selling, or destroying the goods.

Emergency purchase--A purchase made without following the normal purchasing procedure in order to obtain goods or services quickly to meet an emergency.

Emolument--The returns arising from office or employment usually in the form of compensation.

Erroneous bid--A miscalculation in composing a bid resulting in an incorrect price or other term which may affect the bidder's eligibility to be awarded the contract.

Expedite--To hasten or to assure delivery of goods purchased in accordance with a time schedule, usually by contact by the purchaser with the vendor.

Fixed price contract--A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.

Group classification system--A system whereby supplies are grouped with stock numbers assigned to each group and to each item.

Informal bid--An unsealed competitive offer conveyed by letter, telegram, telephone, or other means.

Invitation for Bids--A request, verbal or written, which is made to prospective suppliers requesting the submission of a bid on commodities or services.

Kickbacks--Acts of giving or accepting something of value to influence the award of a contract.

Late bid or proposal--A bid or proposal which is received at the place designated in the Invitation for Bids after the hour established by the invitation as the time by which all bids or proposals must be received.

Letter of complaint--Written procedure for serving complaints against suppliers.

Line item--A procurement item specified in the Invitation for Bids for which the bidder is asked to give individual pricing information and which, under the terms of the invitation, is usually susceptible to a separate contract award.

Lines of authority--In purchasing, the procedure for reviewing approval of Invitations for Bids within an agency-established through state and/or local statutes.

List price--The published price for an item that a vendor uses for informing customers and potential customers.

Malfeasance--Misconduct by a public official.

Management information system--Reporting system showing items and quantities bought in the past.

Market information files--The files on supply sources.

On-hand inventory--Supplies in stock.

Performance specifications--A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.

Prequalification of bidders--The screening of potential vendors in which a government considers such factors as financial capability, reputation, management, etc., in order to develop a list of bidders qualified to bid on government contracts.

Procurement--The process of obtaining goods or services, including all activities from the preparation and processing of a requisition,

through receipt and approval of the final invoice for payments. The acts of preparing specifications, making the purchase, and administering the contract are involved.

Purchase order--A purchaser's document used to formalize a purchase transaction with a vendor. A purchase order, when given to a vendor, should contain statements as to the quantity, description, and price of the goods or services ordered; agreed terms as to payment, discounts, date of performance, transportation terms and all other agreements pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

Purchasing agent--An administrator whose job includes soliciting bids for purchases and making awards of purchase contracts; buyer.

Purchasing official--The administrative official who most directly oversees the activities of purchasing agents and those other aspects of property management that are joined as separate or subordinate sections under individual administrative control.

Purchasing manual--A formal collection of instructions relative to procedures to be followed by all parties when making use of or dealing with the purchasing department in procurement actions.

Qualified bidder--A bidder determined by the government to meet minimum set standards of business competence, reputation, financial ability, and product quality for placement on the bidders list.

Regional bidding--A bidding process whereby deliveries are made to widely scattered points or the requirements are of a local nature. In such a process, the bidders list is divided into needing geographic regions.

Request for proposal(RFP)--A request for a bid on commodities or services which is made to prospective buyers in competitive negotiation.

Rotational bidding--Invitations to bidders which are sent out on a rotational basis; each bidder gets a bid over a period of time.

Scheduled buying--A purchase for which a bid opening date is prescheduled so that using agencies' requirements for the period covered by the contract can be gathered and combined for the Invitation for Bids.

Sealed bid--A bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids; usually required by the purchasing authority on major procurements to ensure fair competition among bidders.

Single-source procurement--An award for a commodity which can only be purchased from one supplier, usually because of its technological, specialized, or unique character.

Spot purchase--A one-time purchase made in the open market out of necessity or to take advantage of a bargain price.

Standard application form--A form that includes financial standing and responsibilities, facilities for production, distribution and service, and length of time successfully in business; used to pre-qualify bidders.

Standard specification--A specification established through a standardization process to be used for all or most purchases of the item involved.

Stock bin card--Card attached to bin which includes columns for receipts, issues, remaining balance, and date..

Surplus property--Inventory not required by one using agency or any using agencies at the present time or in the foreseeable future.

Tabulation of bids--The recording of bids and bidding data that was submitted in response to a specific invitation for the purpose of comparison, analysis, and record-keeping.

Term contracting--A technique in which a source or sources of supply are established for a specified period of time, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

Testing--A phase of inspection involving the determination by technical means of the physical and chemical properties of items or compounds thereof, requiring not so much the element of personal judgement as the application of recognized and established scientific principles and procedures.

Using agency--A unit of government that requisitions items through central purchasing.

Vendor buying--Purchasing in large quantities in order to reduce the price per unit; volume purchasing.

Want list--A list of what items using agencies need but cannot afford within their own budget.

Warehousing--The process whereby repetitive use and surplus items are received, stored, and disbursed from a central geographic location.

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APPROVAL MANUAL

POST TEST

The attached questions directly relate to the information contained in the Approval Manual you have just completed. Please answer each question to the best of your ability by circling the correct answer.

You can check your answers with the answer sheet in the Appendix.

APPROVAL MANUAL EVALUATION QUESTIONS

1. Centralized purchasing should be considered for your unit of government:

   a. If it is at all politically and financially possible
   b. If you have more than 200,000 population
   c. If you have a city manager form of government
   d. None of the above

2. In order that you, the "approval person" can help to establish the central purchasing authority, you must have a working knowledge of:

   a. Specification writing
   b. State and local purchasing laws
   c. Surplus property classification
   d. Contract types

3. Which of the following factors should be considered in forming a centralized purchasing system:

   a. Communication
   b. Efficiency
   c. Effectiveness
   d. All of the above

4. A bidders list is a list of suppliers who are:

   a. Possible bidders
   b. Bidders who have been awarded contracts
   c. Bidders prohibited from bidding
   d. All of the above

5. Establishing a bidders list includes:

   a. Preparing specifications
   b. Prequalifying bidders
   c. Receiving a bid from each bidder
   d. All of the above

6. Maintaining a bidders list includes:

   a. Changing item categories
   b. Resolving conflicts between bidders
   c. Deleting bidders from it
   d. None of the above

7. An activity that should be included in specification preparation is:

   a. Establishing a central control over specification preparation
   b. Choosing methods of testing to be used
   c. Establishing standard specifications for frequently purchased items
   d. All of the above

8. The three basic types of specifications are: (Choose 3)

   a. Design
   b. Performance
   c. Brand name
   d. Single

9. The best and most often required process of awarding contracts is:

   a. Formal sealed bids
   b. Single source purchases
   c. Emergency purchases
   d. Competitive negotiations

10. Competition will be more or less insured in the formal sealed bid process if:

   a. A legal notice is provided
   b. The bidder's list is used in a manner most favorable to competition
   c. Terms, conditions, and specifications of the IFB are set out
   d. All of the above

11. A "late bid" is one that is received:

   a. More than 24 hours later than the time designated for opening bids
   b. More than 2 weeks after the IFB has been issued
   c. After the time set for opening bids
   d. None of the above

12. Bid bonding should be used:

   a. On all sealed bids
   b. When openness is desired
   c. When the reputation of the bidder is known to be bad
   d. When the reputation of the bidder is unknown

13. In deciding who will receive the contract award, the approval person should base his decision on:

a. The suggestions of the purchasing agent
b. Sound reasoning and written guidelines
c. Political priorities
d. Alternate bids

14. Emergency purchases should only be allowed:

a. In duplicate purchasing
b. Through permission of the central purchasing officer or someone in a higher position
c. Through permission of the seller
d. None of the above

15. Single source purchases are made when:

a. When a certain seller is preferred by the purchasing agent
b. When only one department needs the item
c. When there is only one acceptable vendor able to furnish the needed item
d. All of the above

16. Competitive negotiations are used when:

a. Time is a crucial factor
b. High technology items are involved
c. The purchase is for professional services
d. All of the above

17. Lines of authority for review and approval of all purchases are established:

a. Through the guidelines of state and local statutes
b. By the purchasing agent
c. By the legal authority in the government
d. Through federal guidelines

18. One area in the purchasing organization where the purchasing agent has final approval responsibility is:

a. Awarding contracts
b. Maintaining the bidders list
c. Writing purchasing laws
d. Setting up the purchasing organization

19. Malfeasance includes:

    a. Conflicts of interest
    b. Bribery
    c. Kickbacks
    d. All of the above

20. A "conflict of interest" is:

    a. One of the parties involved in a contract holding a personal interest in its making
    b. A legislator acting as an agent for a corporation
    c. A government employee conducting an outside business and signing a contract with his own agency
    d. All of the above

21. Any contract involving a bribe or kickback should be:

    a. Reprocessed
    b. Rejected
    c. Questioned
    d. None of the above

22. The situation of a using agency ignoring purchasing rules:

    a. Is not as bad as a case of bribery or conflict of interest and should not generally be punished
    b. Should be reprimanded through the board or chief executive
    c. Is unpreventable and should be dismissed
    d. Is worse than bribery or conflict of interest and should be punished accordingly

23. As an approval person, you have no responsibilities in the areas of:

    a. Inspection and testing
    b. The bid and award process
    c. Surplus items disposition
    d. Both inspection and testing and surplus items disposition

24. Surplus items can result from:

    a. Decrease in use of an item
    b. An item being replaced by a newer one
    c. A program being replaced or discontinued
    d. All of the above

25. Warehousing is inventory control:

    a. In a central geographic location
    b. On the management level
    c. On the supplier level
    d. None of the above

APPROVAL ANSWERS TO EVALUATION QUESTONS

Answers	Page Reference
1. a	II.3.2
2. b	II.3.4
3. d	II.3.6
4. a	II.3.8
5. b	II.3.8
6. c	II.3.8
7. d	II.3.9
8. a b c	II.3.11
9. a	II.3.16
10. d	II.3.17
11. c	II.3.20
12. d	II.3.20
13. b	II.3.20
14. b	II.3.21
15. c	II.3.22
16. d	II.3.22
17. a	II.3.23
18. b	II.3.26
19. d	II.3.26
20. d	II.3.26
21. b	II.3.27
22. b	II.3.27
23. c	II.3.31 and 32
24. d	II.3.32
25. d	II.3.33

ADM

OCT 3

A D V I S O R Y M A N U A L

MANUAL NUMBER FOUR
OF
PROCUREMENT CODES AND PRACTICES
FOR LOCAL GOVERNMENT

Developed by

KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT

MR. RALPH ED GRAVES, COMMISSIONER

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Package IV

ADVISORY MANUAL

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ADVISORY MANUAL

PRETEST

The attached questions directly relate to the information contained in the Advisory Manual which you will be studying. Please answer each question by checking the correct answer.

You are not expected to know many of the answers at this time. It is only asked that you consider each question carefully and answer to the best of your ability.

Completing these questions will help you to determine your weaknesses and therefore to know those points on which you need to concentrate. You can find answers to these questions behind the Post Test in the Appendix.

ADVISORY EVALUATION QUESTIONS

1. Check which of the following items are most often required in procurement contracts. (Check 5)

_____Time of payment
_____Bid bond
_____Bidding requirements
_____Use of patents
_____Documentation required
_____Termination of contract
_____Damages on default

2. Check which of the following items are generally included in the statement of work for a procurement contract. (Check 4)

_____Specification of the tasks, materials and/or services to be procured
_____Method of payment
_____Delivery schedule
_____Statement of method used in contractor selection
_____List of appropriate contract sources
_____Quantities to be provided
_____Checkpoints for accomplishment

3. Check which of the following statements you believe is more applicable to a Statement of Work.

_____A clear, comprehensive, complete, and legally correct statement of the results to be achieved by contractors ensures that the objectives are attained.

_____Man-hour estimates for each task by discipline and skill levels, coupled with prevailing labor rates, other direct costs that are believed to be necessary, indirect costs and fees may be applied to derive an aggregate estimated total contract cost.

4. Check the following *types* of contracts which are applicable to procurement. (Check 4)

_____Fixed price contract
_____Cost reimbursement contract
_____Time and materials and labor-hour contract
_____Indefinite delivery contract
_____Letter contract

5. Check the *forms* of contract most often used in procurement. (Check 3)

_____Purchase order
_____Fixed price
_____Letter contract
_____Definitive or expressed contract

6. Check the most common methods of selecting contractors. (Check 3)

_____a. Non-competitive negotiations
_____b. Political affiliation
_____c. Geographic location
_____d. Advertisement-sealed bids
_____e. Competitive negotiations

7. Which of the methods listed in Question 6

_____Obtains the lowest price?
_____Obtains the fastest service?
_____Is the easiest to defend if challenged?

8. Indicate who has the responsibility for each of the following tasks: the attorney (A), the purchasing agent (P), or the manager (M).

_____Drafting procurement contract clauses
_____Writing specifications
_____Making final approval on contract awards
_____Choosing the contract form
_____Establishing and maintaining a bidders list

9. Arrange the following steps of selecting a contractor in the order most effective.

_____Prepare a statement of work
_____Determine kind of specifications to be used
_____Draft invitation to bid
_____Ascertain the dollar amount of the contract
_____Place advertisement in newspaper
_____Award contract
_____Open bids
_____Prepare contract
_____Execute contract
_____Receive bid bond

10. Check the actions necessary to establish a local centralized purchasing agency between a county and the major city in the county. (Check 2)

_____Insure enabling state legislation
_____Execute an interlocal agreement
_____Obtain approval by a state official
_____Have both the city and county enact an ordinance
_____Employ a director

11. Check the dollar amount you believe to be the most appropriate threshold below which small purchases procedures apply.

_____None
_____$500
_____$2,500
_____$5,000
_____$10,000

12. Which of the following items require documentation when competitive negotiation is used? (Check 4)

_____Adequacy of competition
_____Reasonableness of cost
_____Responsibleness of contractors
_____Need for patented equipment
_____Memorandum of negotiations
_____Existence of emergency

13. Which is the most effective and appropriate method for resolving disputes between the contractor and the procuring authority?

_____Court of law
_____Special court for procurement contracts
_____Commercial arbitration
_____Decision by purchasing agent with review by court
_____Special Arbitration Tribunal

14. In your opinion, local procurement activities would benefit most from: (arrange in descending order of benefit)

_____A uniform procurement code adopted by all states
_____A model code which states and localities within any state could use selectively
_____No state restriction or requirements on localities
_____Present state and local law

INTRODUCTION TO THE ADVISORY MANUAL

This manual on the advisory function of public purchasing has been prepared because attorneys for cities, counties, and school boards are substantially relied upon by purchasing agents and local officials for legal advice in the purchasing field.

With state and local governments given more authority and responsibility in distributing federal funds, and technological advances resulting in purchases of highly complex equipment, materials, and systems, the legal aspects of purchasing have also increased. This is seen in the purchasing agent seeking more of his legal advisor's time and knowledge and the legal advisor advancing his own knowledge of the purchasing system. A lack of purchasing knowledge on the part of legal advisors results in undue problems for all concerned in purchasing programs.

Obviously, not all state and local governments have the same requirements and procedures governing purchasing. Differences exists for example, in requirements for public advertising solicitation techniques, and procedures for receiving, opening, and awarding bids.

Every public purchasing agent should have sufficient knowledge of his governing laws in order to understand the legal relationships between himself, the agency he serves, and the general public with whom he deals. *Most importantly, he should know how and where to obtain legal guidance.* He needs a legal advisor's guidance for accomplishing most tasks for which he is responsible. Information about assistance he will need is discussed in this package.

The content of the package is designed to let you, as a legal advisor, select and use material appropriate to the needs of your jurisdiction's purchasing program. It is up to you how you use the information.

CHAPTER I: CENTRALIZED PURCHASING

Centralized purchasing is now quite generally recognized as a basic element to the overall operations of government. "Centralized" does not necessarily mean full or complete consolidation of all purchasing requirements, but does entail a centralized system for allowing certain departments or commodities to be under a separate purchasing jurisdiction.

Centralized purchasing is thought to be appropriate only to states and the larger units of local government. This is not so. Though very few smaller local governments have centralized purchasing, some would find it valuable to employ such an approach to purchasing.

The objectives of centralized purchasing in government are fundamental to any efficient administration, and are reflected in such objectives as lower unit costs, reduction in personnel and closer control over expenditures.

Your responsibilities as a legal advisor to the purchasing authority for centralized purchasing are the following:

1. Determine the procurement organization and process permitted or required by state law for your jurisdiction

2. Draft ordinances and interlocal agreements establishing appropriate procurement organization

3. Advise local procurement authority on process and procedure required

These responsibilities will be covered on the next several pages.

Local conditions usually determine the provisions of an authorizing central purchasing charter. These provisions should cover such areas as the title of the agency, its place in the government structure, and the scope of its powers and duties. State statutes usually provide that the authority of central purchasing and its procedures be vested in the purchasing official. Such procedures may include methods of purchasing, delivering, storing, distributing, requisitioning, and establishing standards.

*Go now to your state statute books and cite the statutes that provide for or pertain to a local government's centralized purchasing authority. Describe each statute in one or two sentences.

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Statute _____

Description _____

_____

Though it is not always possible to establish a completely centralized purchasing system, consolidation of certain purchases of common-use items for all departments may be a practical and economical policy.

Most states regulate *county government* centralized purchasing through a special or general statute. Because of the vast population differences, it would be neither practical nor desirable for county purchasing requirements to be under the same regulations. Since a heavily populated urban county requires an elaborate purchasing system, and a rural county much less, the general state statute should offer latitude to each county in adopting rules and regulations to meets its own needs.

Detailed restrictions on centralized *city purchasing* should also be excluded from the state charter. State laws cannot adequately compensate for population differences and should provide for a broad range of operation so that each city can adapt appropriately. The city council can provide detailed policies, subject to revision as required by changing conditions. Again the local statute, though detailed, should only set out general guidelines. Operating methods and procedures should be established by the purchasing authority.

Inter-local joint agencies in most states are regulated by state laws which are flexible in regard to purchasing practices and policies. This is usually necessary in order that management officials of the agency can develop their own policies in cooperation with the local authorities.

CHAPTER II: BID AND AWARD PROCESS

The bid and award process of public purchasing includes all activities of seeking out a product and buying it. The activities for which the purchasing agent is responsible in the bid and award process are:

1. Establishing and maintaining a bidders list
2. Preparing specifications
3. Inviting, opening, receiving, and tabulating bids
4. Evaluating and awarding bids
5. Working with alternative procedures (to bid and award process)

Your responsibilities as a legal advisor relate to all the above listed but especially to activities #3 and #4. For all the activities you must keep the purchasing agent informed of federal, state, and local requirements. He relies upon you for knowledge of all constitutional and statutory authorities and limitations affecting his purchasing program. Specifically, he depends upon you to help him with the following functions:

1. REVIEWING SPECIFICATIONS
2. SELECTING A CONTRACTOR
3. CHOOSING A TYPE OF CONTRACT
4. DRAFTING AN APPROPRIATE CONTRACT
5. DRAFTING A STATEMENT OF WORK
6. DOCUMENTING PURCHASES
7. ESTABLISHING COOPERATIVE PROCUREMENT PROCEDURES

1. REVIEWING SPECIFICATIONS

"Specifications" are the technical and descriptive requirements of a product and its intended use. Specifications should describe the essential qualities a product should have to meet the acceptable purchase requirements of the unit of government. These specifications are the communication media between the buyer and seller as well as the basis upon which bids are prepared.

In order that specifications are made suitable for obtaining the best value, they must contain the *appropriate degree of restrictiveness, restrictive enough* to meet legal requirements and *not too restrictive* to inhibit competition. In other words, specifications for an item must meet minimum legal requirements, while not setting limits that would eliminate from competition those items that are actually eligible.

A *legal yet reasonable degree of restrictiveness* must be determined by discussions between you and the purchasing agent. The legal yet reasonable degree must be applied to the three necessary components of written specifications:

1. Functions or tasks to be performed by the item (or service)

2. Essential characteristics or design features of the item

3. Appropriate standards and methods of testing to be used

Each of these components will be discussed in more detail in Function 5: Drafting a Statement of Work. But it is important to note at this point that you and the purchasing agent should review each component of all sets of specifications to decide whether it meets the legal requirements of your local government, yet is not too restrictive to hinder competition.

*Can you name the three necessary components of written specifications?

1. _____

2. _____

3. _____

Check your answers with the previous page.

In some local governments, department heads and/or consultants, not just the purchasing department, prepare and maintain specifications. An increasing number of larger jurisdictions create specification committees to review specifications and/or advise the purchasing agent. All local governments use *standard specifications* published by their state purchasing department or by one of several federal agencies.

In addition to advising the purchasing agent on the individual components of specifications writing, it is also your job to inform him of the types of specifications he is permitted to use. There are three main types of specifications commonly used:

1. *Brand name specifications* cite a brand name, a model number or some other designation that identifies a specific product as an *example* of quality level desired. The use of brand name specifications should be as limited as possible. Though they are quick and easy to use, they tend to discourage competition and reduce chances of equal opportunity among bidders.

2. *Design specifications* detail the characteristics that the item to be purchased must possess. The use of design specifications is also limited because the full detail they require is often too restrictive for obtaining actual performance needed. Such discourages full competition.

3. *Performance specifications* describe the capabilities the product must possess. These specifications are undoubtedly the most efficient for the greatest number of purchases and are most preferred in public purchasing today.

Each of these types of specifications and others are legally permitted in certain situations in various types of governments. Each has its advantages and limitations, and each should never be chosen to be used because it is the *easiest* method. A specification type always should be chosen for its *effectiveness*.

*Is any specification type disallowed in your government, either by state or local mandate? Yes ____ No ____ List and explain.

1. _____

2. _____

3. _____

2. SELECTING A CONTRACTOR

A contractor usually is selected through one of the following means:

a. *Competitive sealed bidding*

b. *Competitive negotiation*

c. *Non-competitive negotiation*

d. *Small purchase procedures*

Most state and local government laws require that all purchases over a specified dollar amount be made whenever practical by *competitive sealed bidding*. In this process, the purchaser goes through a series of steps to select the "lowest responsible bidder" or "lowest and most advantageous bidder." He first provides legal notice of the potential purchase and sends out Invitations for Bids (IFB) to all qualified bidders. The IFB contains purchase specifications, types of bids required, and details on receiving and opening the bids. The purchaser then receives, opens, and tabulates the bids at the designated place. He then awards the contract to the bidder who not only satisfies the specifications set out in the IFB but also submits a bid lower in unit price, total cost of operation, or value per dollar than any other bidder whose reputation, past performance, and business and financial capabilities satisfy the purchaser's needs. Thus, he is called the "lowest responsible bidder" and awarded the contract.

When it is determined in writing that sealed bidding is infeasible, contracts are usually permitted to be granted by *competitive negotiation*. When time is a crucial factor, when the procurement involves high technology items, or when the purchase is for professional services, competitive negotiation is usually permitted as the most effective method. Negotiation generally involves formal bargaining to reach an agreement on price and other terms of a proposed contract. Most of the principles that apply to the sealed bid and award process also should be applied to competitive negotiation; for instance a list of qualified vendors should be prepared, public notice of the needed product should be made, and qualified vendors should be solicited. Most importantly, competitive negotiation should be conducted in an impartial fashion and thus, be truly "competitive."

Non-competitive negotiation or "sole source" purchases usually are permissible when it is determined in writing that competition is not feasible, i.e., the product required is either patented or only available from one source. Non-competitive negotiation is also used for emergency purchases. The use of this procurement method should be closely controlled by statute.

Small purchase procedures are a form of non-competitive negotiations, but they are under the dollar amount required for formal sealed bids. The dollar amount of the purchase is usually not sufficient to justify the administrative expense required by competitive procurement procedures. This dollar amount is usually set at about $2,500.

Some local government statutes and/or state laws demand that non-competitive negotiations and small purchase contracts be subject to the following stipulations:

1. An annual report made on all non-competitive procurements

2. Contractors' certifying the cost or pricing data used in arriving at a contract price

3. Contractors' affording the government access to their records and plans

Any negotiation type procurement should be justified and have placed in its contract file a documentation of the basis of the award to the contractor.

*Now, see if you can name the four methods usually allowed for contractor selection in a local government:

1. _____

2. _____

3. _____

4. _____

(Check back to page II.4.7 for answers.)

*Are these four methods allowed in your unit of government? Under what conditions? (Refer to your statute books, if necessary.)

1. *Competitive sealed bidding*

Allowed? Yes ____ No ____ Under what conditions? _____

_____

_____

2. *Competitive negotiation*

Allowed? Yes ____ No ____ Under what conditions? _____

_____

_____

3. *Non-competitive negotiation*

Allowed? Yes ____ No ____ Under what conditions? _____

_____

_____

4. *Small purchase procedures*

Allowed? Yes ____ No ____ Under what conditions? _____

_____

_____

*Are any other particular types of purchases prohibited by your state or local statutes? List and describe.

1. _____

_____

2. _____

_____

Not only are you responsible for directing the purchasing agent as to the *conditions* under which he is required to make a certain *type* of purchase but also as to the *legal requirements* in making that particular type of purchase. This may include, as stated on page II.4.10, giving adequate public notice of the Invitation for Bid, opening bids publicly, and/or awarding the contract by public notice. These restrictions will vary from one governmental unit to another, and from one type of bid to another.

For instance, in a sealed bid purchase, the purchaser is often mandated to go through the following processes:

1. Give adequate public notice of the Invitation for Bids (IFB)

2. Open bids publicly at the time and place stated in the IFB

3. Award the contract by written notice

3. CHOOSING A TYPE OF CONTRACT

Not only is a local government restricted as to the types of purchases it can make under certain conditions, but it is usually required to use particular contracts for each different purchase situation. If statutes and/or ordinances do not set out guidelines for contract selection, it is your responsibility to do such for the purchasing agent. A memorandum to provide for justification of the type of contract selected (along with the method of procurement chosen) should be placed in the procurement file.

In the past, the most commonly used purchase contract was the fixed-price contract; it allowed for fair and reasonable fixed terms following open competitive bidding. However, a variety of contract types have evolved in recent years following closely with the evaluation of different purchasing arrangements. The more complex and less definite requirements of some of today's transactions (provided through use of negotiation techniques) demand greater flexibility than is possible under a fixed-price contract.

Contracts are generally classified according to (1) the *form* they take, and (2) the *pricing terms* they include. Contract *forms* fall into three categories:

1. The letter contract--a preliminary contractual instrument

2. The definitive contract--contract terms and conditions are agreed upon and expressed in full

3. The purchase order--a simplified, rapid means of purchasing small quantities of standard materials

These contract forms are covered in more detail in function #4; "Drafting a contract." Contract forms are in turn, classified by type or the pricing provisions they contain and other factors. Proper selection of the contract type is of prime importance in obtaining fair and reasonable prices for the buyer and the contractor.

The most commonly used *types* of purchasing contracts are:

1. Fixed price contracts

2. Cost-reimbursement type contracts

3. Time and materials and labor-hour contracts

4. Indefinite delivery type contracts

1. Fixed-price contracts. This type of contract is an agreement by the contractor to produce an item or perform a service for a price that is either specified in the contract or calculated in its terms. The fixed-price contract usually is used with a sealed bid or negotiated procurement and preferably conducted in a competitive environment. There are basically three kinds of fixed-price contracts.

a. Firm fixed-price contracts. This type of contract is absolutely not subject to adjustment because of performance costs. Regardless of his costs, the contractor collects the agreed-upon price for acceptable performance. He receives the maximum reward for efficient performance and a possibility of maximum loss for inefficiency. The firm fixed-price contract is especially suitable for; *standard commerical purchases, modified commerical purchases, purchases where specifications are reasonably definite, and construction.*

b. Fixed-price contracts with escalation. *When the delivery or performance schedule of a fixed-price contract extends over a long period of time,* contractors may want to protect themselves from unusual risks by listing a number of circumstances under which their prices may be adjusted. This contract is used for purchases directly affected by industry-wide wage rates.

c. Fixed-price incentive contracts. This type of contract provides for the establishment of the final contract price by the application of an agreed-upon formula relating profit to total actual contract costs. It motivates the contractor to increase his efficiency and reduce his costs while producing the best possible item. It is best used in *situations involving routine development work such as modifications to existing hardware* and generally for large amounts extending over long periods of time.

As you can see, all fixed price contracts limit the price for the total effort undertaken, each kind allocating the element of risk and incentive in a different manner.

*For each of the following items, state type of fixed price contract (firm fixed-price, fixed-price with escalation, or fixed-price incentive) that should be used in its purchase (assuming it is purchased under sufficient competitive procedures).

Item	Type of fixed-price contract
1. Five police cars immediate delivery	_____
2. Meat products for school cafeteria on a one year contract basis	_____
3. Construction of new municipal building	_____
4. Computer system maintanance and development	_____
5. Police and fire forces uniforms on a one year contract basis	_____

Answers are:

1. Police cars--*firm fixed-price*
2. Meat products--*fixed-price with escalation*
3. Construction--*firm fixed-price*
4. Computer maintenance--*fixed-price incentive*
5. Uniforms--*fixed-price with escalation*

2. Cost reimbursement type contracts. This type of contract provides for payment to the contractor allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. It does establish an estimate of total cost for the purpose of obligating funds as well as a ceiling which the contractor may not exceed (except at his own cost) without prior approval from the buyer.

The cost-reimbursement type contract should be used only in a competitive environment when uncertainties are involved to such an extent that cost of performance cannot be reasonably estimated. In using this type of contract, it must be pre-established that the contractor's cost accounting system is adequate and that the buying personnel will conduct appropriate surveillance of the contractor's performance to insure wasteful methods are not being used.

There are four basic kinds of cost reimbursement type contracts:

a. Cost contracts. The contractor receives no fees, but the buyer agrees to reimburse the contractor for allowable costs as governed by applicable state and local policies.

b. Cost-plus-fixed-fee contracts. A fixed fee is negotiated and does not vary with the actual cost, but may be adjusted as a result of changes in work or services to be performed. *This contract is appropriate when there is insufficient cost data upon which to base a fixed-price contract.* Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-fixed-fee contract provides the contractor with only a minimum incentive for cost control.

c. Cost-plus-incentive-fee contract. This contract provides for reimbursement of the contractor's allowable costs. A target cost, a target fee, a minimum and maximum fee and a fee adjustment formula are set forth in the contract. The target cost is the best estimate of the cost of completing the work. If the contractor's actual costs are less than the target cost, he receives a larger fee than the target fee (based on fee formula). If his costs are greater than the target costs, his target fee is adjusted downward.

d. Cost-plus-award-fee contract. Again a minimum and maximum fee is set between which the contractor receives a return based upon the level of performance achieved. In this type of contract, the contractor's

performance is evaluated periodically and the fee adjusted accordingly. *This type of contract is generally used for design, architecture, programming, and engineering.*

Note: Special provisions may be added to the above contracts in order to give them new dimensions. Such provisions may include limitation-of-cost or a ceiling on overhead rate.

*Name three different cost-reimbursement type contracts and describe a significant factor of each.

1. _____

_____

_____

_____

_____

2. _____

_____

_____

_____

_____

3. _____

_____

_____

_____

_____

Review the previous pages to check your answers.

3. Time and materials and labor-hour contracts. A time and materials contract is for the purchase of supplies or services on the basis of payment for labor performed, and for materials at cost. The hourly rate is fixed and includes direct and indirect labor, overhead, and profit. For the most part this type of contract is used for repair, maintenance or overhaul work, or for emergency work requiring commercial contractors. *Its use should be limited to instances where it is difficult to estimate the extent or duration of work or to anticipate costs with any degree of accuracy.*

In this type of contract, strict contractor surveillance is necessary to ensure that performance by the contractor is not wasteful. The labor-hour contract is the same as the time and materials contract, except that the contractor does not provide materials.

4. Indefinite delivery type contracts. When the exact time of delivery is not known at the time of contracting one of the following indefinite delivery type contracts can be used:

a. Definite quantity control. This contract is used for a specified quantity of supplies or extent of service to be provided at designated locations on order. The contract unit should be established at a fixed price.

b. Requirements contract. This type contract is used when the quantity of supplies or extent of service can only be estimated. The buyer obligated himself to place orders with a contractor whose prices and terms of delivery have been established to be the best offer. All requirements for a particular item or service must be filled during the life of the contract for the ordering activities shown in the contract. *Requirement contracts are used for commercial or modified commercial items which have a recurring demand.*

c. Indefinite quantity contract. In this contract, quantities of supplies or services are not stated, except within limits. The buyer only guarantees that he will purchase an agreed minimum quantity during the contract period. There is only a stated maximum quantity that cannot be exceeded. This type contract is used for the same categories of items as the previous two types of indefinite delivery contracts.

There are many different types of contracts available to cover the broad spectrum of contracting operation. The range is great, affording procurement organizations flexibility to fit the appropriate type contract with the nature of the item(s) purchased. The contract selected for each purchase should be of any type (or combination of types) that promotes the best interests of the government.

Specifically, to make an intelligent decision as to the most appropriate type contract for each procurement, the following five factors are of prime consideration:

1. The extent to which it is possible to estimate costs in advance

2. The extent of competition used

3. The type and complexity of the purchase

4. The urgency of the purchase

5. The period of contract performance

Additional factors, which were covered under the individual contract descriptions, also are important to consider. Generally, the *fixed-priced*

contract probably is the most desirable type of contract, since requirements are clearly defined and the most fair and reasonable prices are offered to the government. On the other hand, the *cost-plus-fixed-fee contract* should be used only when absolutely necessary, since it offers contractors little incentive to reduce costs or improve performance. The various *incentive-type contracts* are between the two extremes and were developed to attain purchase flexibility.

*Name three of the five factors to consider in choosing the most appropriate contract for a specific purchase.

1. _____

_____

2. _____

_____

3. _____

_____

Refer to the previous page for your answers.

4. DRAFTING A CONTRACT

Drafting a contract calls for:

a. Choosing the correct contract form

b. Including appropriate provisions in the contract

a. Choosing the correct contract form

Knowing how to draft a contract has a direct bearing on the eventual cost of purchasing. In the last section we saw how the use of a certain type of contract in the wrong situation can only have harmful consequences. The use of the wrong *form* of contract also can cause waste or allow abuse.

Contract forms fall into three basic categories: *The definitive contract, the purchase order, and the letter contract.*

1. *The definitive contract.* This contract is one in which all terms and conditions are agreed upon and expressed in full. It can be used only when there is sufficient time for negotiation. It does provide for the most precise terms, and the most agreeable conditions for both the buyer and contractor.

2. *The purchase order.* This is a simplified form of a definitive contract that normally contains pre-printed contractual provisions. It is used when supplies or services are bought on a fixed-price basis, and the price does not exceed a certain dollar amount (for instance, $2,500).

3. *The letter contract.* This is a written preliminary contract which authorizes immediate manufacture of supplies or performance of services, including planning. It is intended to get the contractor started without delay, as in the case of emergencies. This form of contract occasionally serves to initiate production of critical supplies and purchases when administrative delays or negotiation impasses are present.

Safeguards usually have to be established to prevent over-dependence on letter contracts. One safeguard, for instance, would be that the letter contract must be replaced by a definitive contract within a certain number of days. Still the contractor already has the business and the buyer is at a disadvantage because negotiation of the definitive contract is limited to coverage of the letter contract. To prevent this, the letter contract should contain agreement:

a. That the contractor will begin work immediately

b. That certain definitive contract clauses will be acknowledged

c. That the contractor will keep under the monetary limit set in the letter contract

d. That the contractor will enter into negotiations in good faith to arrive at a fair definitive contractural arrangement with the buyer

Since a letter contract generally is looked upon with disfavor, its use must be justified by the buyer in writing and placed in the appropriate files.

*Name the three basic contract *forms* and describe each briefly.

1. _____

_____

2. _____

_____

3. _____

_____

Refer to the previous page to check your answers.

b. Including appropriate provisions in the contract

Contractual provisions must provide not only for a sound and complete agreement, but allow for administrative, contractual, or legal remedies in case the contractor violates or breaches contract terms. Minimum provisions should include: *(1) performance and payment, (2) contract bonds, (3) contract termination, (4) default, (5) patents and copyright, (6) access to contractor's records, and (7) settlement of disputes.*

1. *Performance and payment.* Conditions and terms should be set out for specifics of how the work should be performed and how payments are to be made.

Complicated or involved contracts usually provide a Statement of Work as a special section of the contract to describe in precise terms the tasks, materials, and/or services to be procured in order to fulfill a requirement. The Statement of Work will ordinarily include specifications as well as a time schedule for performance. (In view of the importance of the Statement of Work, this document will be treated separately.)

2. *Contract bonds.* Contract bonds can be broken down into two categories: general bid bonds, and performance and payment bonds.

a. General bid bonds--in all contracts for construction or facility improvements over $100,000, a general bid bond is required. A sample contract provision for general bid bonds as suggested is in the Appendix, Exhibit I.

b. Performance and payment bonds--contracts or facility improvements in excess of $100,000 are also required to provide a performance bond. LEAA's suggestion for performance and payment bonds can be found in the Appendix, Exhibit II.

3. *Contract Termination.* All contracts in excess of a set dollar amount contain suitable *provisions, conditions, and methods of circumstances beyond the contractor's control.* LEAA provides an example for

cost-plus-fixed-fee contracts that covers both convenience and default termination. That provision can be seen in the Appendix, Exhibit III.

4. *Default.* It is usually necessary to include a provision in the contract in the event that a termination for default becomes necessary. Again, LEAA provides such an example provision appropriate for inclusion in form fixed-price contracts. The provision can be used as an advance agreement in the event a termination for default becomes necessary during the period of contract performance. This provision is found in the Appendix, Exhibit IV.

5. *Patents and copyrights.* All purchasing contracts should contain a notice that any discovery or invention that is developed as a result of the work performed under contract to an LEAA grantee or subgrantee should be referred by the contractor, through the purchaser to LEAA. LEAA will then determine whether or not and where a patent or copyright application should be filed. The purchaser will, in turn, (by agreement of the contractor) have a royalty-free license on the product. Sample contract provisions reflecting the LEAA requirements for Patents, Copyrights, and Rights in Data are in the Appendix, Exhibit V.

6. *Access to contractors records.* The contractor should agree to give the purchaser the right to examine, audit, excerpt, and transcribe any records of the contractor that directly relate to the contract. LEAA suggests a provision listed in the Appendix, Exhibit VI.

7. *Settlements of disputes.* It is important that a method be provided for prompt action on claims and disputes arising under a procurement contract. Some contracts provide that the public procurement officer may make an initial decision subject to review by the courts, while other contracts provide for commercial decision. The State of Pennsylvania established a permanent Board of Arbitration with original jurisdiction over contractual controversies and appeals to a specified court in the state capital.

The American Bar Association Remedies Committee for the Model Procurement Code states the problem:

> It is considered essential that the procuring Activity have authority to settle contract controversies. This would avoid unnecessary litigation and often is essential for fair treatment of parties contracting with the State.
> . . . on the other hand, some safeguards are needed to assure that the settlement authority is not abused.

The Model Procurement Code proposes to reconcile these two goals by suggesting the provisions listed in the Appendix, Exhibit VII.

Name five of the seven provisions that should be included in every purchase contract.

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

5. _____

_____

The seven provisions that should be included in a procurement contract are: *Performance and payment, contract bonds, contract termination, default, patents and copyrights, access to records, and settlements of disputes.* Each of these provisions must be set out in every contract to which it applies. There is another provision even more important to include: the *Statement of Work.* Because of the importance of the statement of work provision, it will be discussed separately in the following section.

5. DRAFTING A STATEMENT OF WORK

The statement of work (SOW) is the single most important element of a contract, and subsequently, of the purchasing procedure. It is the statement that specifically describes the tasks to be accomplished by the contractor, the conditions under which the work is to be performed, and all goods and services to be supplied. The SOW has a direct influence upon the quality of the contractor's performance and the nature of results obtained. If the SOW is deficient, the complete project may be a failure or contract price and administrative costs may be greatly increased.

The main objective of the SOW is to insure that the products purchased meet the required specifications. This can be accomplished by including the following information in the SOW:

a. Clearly state the work required of the contractor

b. Set reasonable pricing limits

c. Identify needed resources

d. Include appropriate specifications

e. List proper quantities

f. Provide checkpoints for accomplishment

g. Set time frames for each task to be performed by the contractor

Using a-g above, draft below a statement of work for the specifications that are in the Appendix, Exhibit VIII.

6. Documenting Purchases

In documenting purchases, purchasers usually use their own procurement regulations and procedures which reflect applicable state and local laws. The minimum standards usually required for the following types of purchases are listed below:

a. Records for formal advertised procurements

b. Records for negotiated procurements

c. Justification of type contract

a. Records for formal advertised procurements

Records of formal advertised procurements are necessary to show that in the basis for contract or selector there was *adequate competition*, and that the selected contractor was *both responsive and responsible* in his bid.

To show there was *adequate competition*, the bid price must be fair and reasonable. A cost is reasonable if, in its amount, it is no more than would be incurred by an ordinarily prudent person in conducting government service or business. Determination of adequate competition (and cost reasonableness) must be documented and placed in the purchase file.

The *responsiveness* and *responsibility* of a bidder should have been determined before the award was made, but are necessary to justify in writing once the contract is drawn up.

The *responsiveness* of a bid depends upon whether or not it complies with all provisions in the Invitation for Bids, including method, timeliness, and substance of the bid. A bidder is *responsible* if he is a proven dealer in the commodity and can be relied upon to perform satisfactorily. If the contractor's bid is found to be either not responsible or not responsive, reasonings should be documented and included in the procurement file, and the contractor should be notified that his bid will not be given further consideration. An LEAA example of records of formal advertised procurement is shown in the Appendix, Exhibit IX.

b. Records for negotiated procurements

Negotiated procurements must include documentation of:

1. Adequacy of competition (and therefore reasonableness of cost)

2. Basis for contractor selection (whether the bid is both responsible and responsive)

3. Justification of purchase method

Justification of the purchase method (#3) is the most important for negotiated procurements. (#1 and #2 are most important for formal purchases and were discussed in the previous section.)

Justifying the purchase method is to show that there was adequate competition if at all possible. Determination with supporting rationale should be documented in the purchase file. An LEAA example of justification for a non-competitive procurement is shown in the Appendix, Exhibit X.

*Rename the three factors that should be documented in a negotiated procurement.

1. _____

_____

2. _____

_____

3. _____

_____

Refer to page II.4.22 for the correct answers.

c. Justification of type contract

A memorandum for inclusion in the procurement file which provides the justification for the type of contract selected. An LEAA example for this is shown in the Appendix, Exhibit XI.

7. ESTABLISHING COOPERATIVE PROCUREMENT PROCEDURES

Local jurusdictions sometimes engage in or are required to engage in *cooperative procurement*. This is the process whereby two or more political entities buy under the same contract to obtain benefits of volume purchases and/or reduction in administrative expenses. Since cooperative purchasing programs necessarily extend across jurisdictional lines, statutory authorization is required. Generally, this involves a specific act for each specific instance.

Sound cooperative purchasing programs require that all participants be actual parties to the contract. Such a requirement protects the principle that a bidder knows for whom he is bidding and who receives the bid. Programs such as this have been very successful in a variety of relationships, including state and local governments, and county and municipal governments.

The weakest programs are permissive-type arrangements whereby a third party agency, such as a local government, can use a contract (such as a state's) if, when, and how it chooses. State contract prices become, in effect, ceiling prices against which non-state agencies can bargain. Such practices place the successful bidders in the position of having their contract prices as targets against which other bidders may negotiate. Obviously, any appreciable amount of this "second bidding" discourages bidders from offering their most favorable prices on state contracts.

Central warehousing can help provide for development of a successful cooperative purchasing program. The largest governmental unit can buy in huge quantities, while smaller units either can order or pick up certain types of items from the warehouse.

Not all state and local governments have the same requirements and procedures governing cooperative purchasing. Therefore, when two or more purchasing jurisdictions seek to combine their needs for mutual advantage difficulties often are encountered in meeting the legal requirements for all participants. Considering the divergence of policies and practices that exist among states, cities, and counties, a purchasing agent finds it difficult to assign his purchasing authority to another jurisdiction without departing from his own jurisdiction's established practices. Since the degree to which he must comply with his own purchasing laws when entering into such cooperative agreements is usually not made clear in the statutes, cooperative purchasing is not always enthusiastically or effectively undertaken. *Provisions for cooperative purchasing must be designed to eliminate interpretations that are either so restrictive that they hinder widespread use of cooperative purchasing, or too weak to control it.* The basic requirement of such provisions should be that the purchasing authority conduct its operations according to the principles of *open competition.* Procedures and practices for insuring this competition can be left to the rules and regulations of the purchasing authority.

Since government purchasing procedures are far from standardized, your unit of government, like every other unit, has a dire need for aid in interpretation and implementation of its own combination of federal, state, and local purchasing regulations. Government officials need a legal authority knowledgeable in the purchasing area to help them establish a purchasing system and to operate it according to the diverse needs of the using agencies, the suppliers, and the public.

CHAPTER III: APPROVAL PROCESS

In order that purchases are legitimate in all respects, they must not only comply with *state and local regulations*, but must also be consistent with *federal* laws and standards.

The three most important sets of standards which relate to the purchasing process are:

1. LABOR STANDARDS
2. CIVIL RIGHTS
3. ENVIRONMENTAL QUALITY

1. LABOR STANDARDS

For wage and hour standards, the *Public Contracts Act* requires every employer engaged in public construction, service, or supply to pay his employees at a rate not less than the federal minimum wage and to pay 1 1/2 times the basic rate of pay for all hours worked over eight in any one day or forty in a week, whichever is greater. Most states have minimum wage and hour acts, modeled after the federal *Fair Labor Standards Act*, requiring that every employer pay his employees not less than a minimum rate fixed by law and 1 1/2 times (for instance) the basic rate for all work performed in excess of forty hours in any work week.

The *Davis-Bacon Act* provides that every contract for public construction shall contain a provision stating that the minimum wages to be paid shall be based upon the wages determined to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, or other subdivision of the State in which the work is to be performed. Every contract shall contain a stipulation that the contractor or his subcontractor shall pay all employees employed directly upon the site of the work unconditionally and not less often than once a week the full amount accrued at time of payment, computed at wage rates not less than those contained in the determination of prevailing rates.

The local purchasing agent has the following duties in regard to such wage rates:

1. Certify in the application process that they will assure compliance with Section 110 of the Act.

2. Designate appropriate staff to act on behalf of the recipient to ensure compliance with all applicable labor standard requirements as well as to act as liaison to HUD.

3. Inform all contractors and subcontractors of Section 110 requirements and obligations and require them to sign necessary certifications.

4. Ensure inclusion in all construction contract documents and bid specifications applicable wage determinations and labor standard provisions.

5. Maintain full documentation, available to HUD, of all Section 110 requirements; namely,

a. Weekly payrolls
b. Requests for wage decisions
c. Requests for additional classification
d. Copies of wage decisions and any modifications
e. Start-construction notices
f. On-site inspection reports
g. Employee interviews
h. Correspondence and memoranda
i Wage restructures
j. Pre-construction conference records

6. Obtain the Wage Determinations:

a. Area Wage Determinations are published periodically in the Federal Register and are effective until modified. HUD Area Office will furnish upon request.

b. Individual Project Determinations are issued by the U. S. Department of Labor on request for projects not covered by Area Determinations. Each determination expires 120 days from the date of issuance.

c. Requests for Wage Determination are made on the Labor SF-308 form with the following information provided:

Project location
Description of proposed work
Dollar value of contract
Proposed dates of advertising for bids
Crafts for which wage determinations are requested
Available evidence of contract payment for similar work

7. Verify with HUD Area Office the current eligibility status of all contractors to be used.

8. Hold a conference with principal contractor and available subcontractors prior to the start of construction to advise them of their responsibilities. A report to be prepared and retained by recipient should include the following information:

a. Project name, location and description
b. Name of contractor
c. Contract amount
d. Date and place of conference
e. Conference attendees
f. Summary of items covered

9. Obtain Weekly Payroll Submission and Review (Form WH-347) from each contractor and subcontractor and examine for accuracy and completeness. Field inspections and employee interviews should be used as needed.

10. Maintain and file a labor standards enforcement on each project.

11. Ascertain that the contractor's use of apprentices meets the requirements of law.

The Copeland Act is for the purpose of preventing kickbacks and provides that:

> However, by force, intimidation, or threat of procurement dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than $5,000 or imprisioned not more than five years, or both.

2. Civil Rights

Equal Employment Opportunity Act provides that, under all contracts in excess of $10,000, each contractor shall be required to have an affirmative action plan which declares that it does not discriminate on the basis of race, color, religion, creed, national origin, sex, and age. The contractor should specify goals and target dates to assure the implementation of that plan.

The provision shown in the Appendix, Exhibit XII is a typical example and is suitable for both fixed-price and cost reimbursement contract types. Such a provision is appropriate unless the particular contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (Title 41 Code of Federal Regulations - Chapter 60).

3. Environmental Quality

The Clean Air Act states that contracts and subgrants of amounts in excess of $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders or

regulations issued pursuant the Clean Air Act of 1970. Violations shall be reported to the grantor agency and the regional office of the Environmental Protection Agency.

Refer to the Appendix, Exhibit XIII for a sample contract provision implementing the requirements of the Clean Air Act. Such a provision is an example of a clause suitable for both cost reimbursement and fixed-price contract types.

CHAPTER IV: APPENDIXES

EXHIBIT I

BID BONDS - CONSTRUCTION CONTRACTS OVER $100,000

1. All bids shall be accompanied by one of the following forms of bidder's security:

-Cash
-Cashier's check made payable to the purchaser
-Certified check made payable to the purchaser
-Bidder's bond executed by a surety company authorized to do business in this state, made payable to the purchaser

2. The security shall be in an amount equal to at least 5% of the amount bid.

3. If the contract is not awarded to the bidder, the security will be refunded within 3 days of the announcement of the award.

4. The bid bond will be returned to the successful bidder on bidder fails to execute the contract, the amount of his security shall be forfeited to the purchaser.

EXHIBIT II

PERFORMANCE AND PAYMENT BOND - CONSTRUCTION CONTRACTS OVER $100,000

1. The Contractor agrees to furnish to the governmental unit at his own expense a performance bond and a payment bond which shall become binding upon the award of the contract to the Contractor.

2. The performance bond shall be 100% of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and terms thereof. The bond shall be solely for the purchaser.

3. The payment bond shall be fixed at 100% of the contract amount solely for the protection of claimants, as defined in paragraph 6 of this clause, supplying labor or materials to the principal Contractor or his subcontractors in the prosecution of the work provided for in the contract.

4. The bond shall be executed by a surety company authorized to do business in this state. The purchaser shall be the payee.

5. The bonds shall be filed in the purchaser's office within 7 days of the notification of the award of the contract.

6. A "Claimant" means a person having furnished labor, material or both, used or reasonably required for use, in the performance of the contract.

7. A claimant who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which payment bond is furnished under the provisions of paragraph 3 of this clause, and who has not been paid in full therefor before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which claim is made, may sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of the civil action, prosecute such action to final judgement for the sum justly due him and have execution thereon. A claimant not having a direct contractual relationship with the principal contractor shall not have a right of action upon the payment bond unless (a) he has within 30 days after furnishing the first of such material or performing the first of such labor, served on the principal contractor a written notice, which shall inform the principal of the nature of the materials being furnished or to be furnished, or labor being performed or to be performed and identifying the party contracting for such labor or materials and the site for the performance of such labor or the delivery of such materials, and (b) he has given written notice to the principal Contractor and Purchaser within 90 days from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material

for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by certified mail, postage prepaid, in an envelope addressed to the principal contractor, the purchaser involved, at any place at which said parties maintain a business or residence. The principal Contractor shall not be required to make payment to a subcontractor of sums due from the subcontractor to parties performing labor or furnishing materials or supplies, except upon the receipt of the written orders of such parties to the subcontractor the sums due such parties.

8. The agent in charge of the office of the purchaser shall furnish to anyone making application therefore who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made, or that he is being sued on any such bond, or that it is the surety thereon, a certified copy of the bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original.

EXHIBIT III

TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF
THE PURCHASER (STATE OR LOCAL GOVERNMENT)

1. The performance of work under the contract may be terminated by the Purchaser in accordance with this clause in whole, or from time to time in part:

a. Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Purchasing Agent may allow) after receipt from the Purchasing agent of a notice specifying the default; or

b. Whenever for any reason the Purchasing Agent shall determine that such termination is in the best interest of the Purchaser. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Purchaser, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under "a" above, it is determined for any reason that the Contractor was not in default pursuant to "a", or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor, the Notice of Termination shall be deemed to have been issued under "b" above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

2. After receipt of a Notice of Termination and except as otherwise directed by the Purchasing Agent, the Contractor shall:

a. Stop work under the contract on the date and to the extent specified in the Notice of Termination;

b. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

d. Assign to the Purchaser, in the manner and to the extent directed by the Purchasing Agent, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Purchaser shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

e. With the approval or ratification of the Purchasing Agent, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

f. Transfer title to the Purchaser (to the extent that the title has not already been transferred) and delivered in the manner, at the times, and to the extent directed by the Purchasing Agent, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of the work terminated by the Notice of Termination; (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Purchaser;

g. Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Purchasing Agency, any property of the types referred to in "f" above: Provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Purchasing Agent: and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Purchaser to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Prchasing Agent may direct;

h. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

i. Take such action as may be necessary, or as the Purchasing Agent may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Purchaser has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after ninety days after receipt of the notification of termination, the Contractor may submit to the Purchasing Agent a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Purchasing Agent, and may request the Purchaser to remove such items or enter into a storage agreement covering them. Not later than fifteen days thereafter, the Purchaser will accept such items and remove them or enter into a storage agreement covering the same: Provided, that the list submitted shall be subject to verification by the Purchasing Agent upon removal of the items or, if the items are stored, within forty-five days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

3. After receipt of a Notice of Termination, the Contractor shall submit to the Purchasing Agent his termination claim in the form and with the certification prescribed by the Purchasing Agent. Such claim shall be submitted promptly but in no event later than 3 months from the effective date of termination, unless one or more extensions in writing are granted by the Purchasing Agent upon request of the Contractor made in writing within such 3 month period or authorized extension thereof. However, if the Purchasing Agent determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 3 month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Purchasing Agent may, subject to any review required by the Purchaser's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

4. Subject to the provisions of paragraph "3", and subject to any review required by the Purchaser's procedures in effect as of the date of execution of this contract, the Contractor and the Purchasing Agent may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

5. In the event of the failure of the Contractor and the Purchasing Agent to agree in whole or in part, as provided in paragraph "4", as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Purchasing Agent shall, subject to any review required by the Purchaser's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

a. If the settlement includes cost and fee--

(1) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Purchasing Agent: Provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(2) There shall be included therein so far as not included under "(1)" above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph "2e" above, which are properly chargeable to the terminated portion of the contract;

(3) There shall be included therein reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: Provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(4) There shall be included therein a portion of the fee payable under the contract determined as follows:

(a) In the event of the termination of this contract for the convenience of the Purchaser and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractors' termination claims, less fee payments previously made hereunder; or

(b) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, or such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Purchaser bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this subparagraph "a" is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Purchaser the excess amount.

b. If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph "a (4)" above.

6. Costs claimed, agreed to, or determined pursuant to paragraphs "3", "4", and "5" of this clause shall be in accordance with the standardized cost allocation and allowability principles prescribed for all contracts under federal grant-in-aid programs in Bureau of the Budget Circular No. A-87 in effect on the date of this contract.

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EXHIBIT IV

DEFAULT

1. The Purchaser may, subject to the provisions of paragraph "3" below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

a. If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

b. If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Purchasing Agent may authorize in writing) after receipt of notice from the Purchasing Agent specifying such failure.

2. In the event the Purchaser terminates this contract in whole or in part as provided in paragraph "1" of this clause, the Purchaser may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Purchaser for any excess costs for such similar supplies or services: Provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

3. Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include but are not restricted to, acts of God or of the public enemy, acts of the Purchaser, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Purchasing Agent, photographs, microphotographs, or other authentic reproductions thereof.

4. This provision is appropriate for inclusion in Firm Fixed Price contracts as an advance agreement in the event a termination for default becomes necessary during the period of contract performance.

EXHIBIT V

PATENTS

If any discovery or invention arises or is developed in the course of or as a result of work performed under a contract to an LEAA grantee or subgrantee, the contractor shall refer the discovery or invention to LEAA through the Purchaser. The contractor agrees that determinations of rights to inventions made under this contract shall be made by the Administrator of Law Enforcement Assistance, or his duly authorized representative, who shall have the sole and exclusive powers to determine whether or not and where a patent application should be filed and to determine the disposition of all rights in such inventions, including title to and license rights under any patent application or patent which may issue thereon. The determination of the Administrator, or his duly authorized representative, shall be accepted as final. In addition, the contractor hereby agrees and otherwise recognizes that the Purchaser, and in turn the Federal Government, shall acquire at least an irrevocable non-exclusive royalty-free license to practice and have practiced throughout the world for governmental purposes any invention made in the course of or under this grant. The contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts.

COPYRIGHTS AND RIGHTS IN DATA

Where activities supported by this contract produce original computer programs, writing, sound recordings, pictorial reproductions, drawings or other graphical representation and works of any similar nature (the term computer programs includes executable computer programs and support data in any form), the Purchaser, and in turn, the Federal Government have the right to use, duplicate and disclose, in whole or in part, in any manner for any purpose whatsoever and have others do so. If the material is copyrightable, the contractor may copyright such with approval of the grantee, but the Purchaser and the Federal Government reserve a royalty-free nonexclusive and irreversible license to reproduce, publish and use such materials, in whole or in part, and to authorize others to do so. The contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts.

NOTE: Copyrights in the grantee's own name may be appropriate in some cases and thus should be considered.

EXHIBIT VI

EXAMINATION OF RECORDS

1. The contractor agrees that the Purchaser or any of his duly authorized representatives shall have access to and the right to examine audit, excerpt and transcribe any directly pertinent books, documents, papers and records of the contractor, involving transactions relating to this contract. Such material must be retained for 3 years. The retention time shall be calculated from the end of the contractor's fiscal year in which the final entry was made in the records retained.

2. The contractor agrees to keep a record of pertinent books, documents, papers and records involving transactions relating to this contract. Duplicate copies and intermediate data will be retained if they contain significant information not found on the record copy. The contractor agrees to keep financial and cost accounting data to include: accounts receivable invoices, transportation records, purchase and transfer of material, cash ledgers, checks for salaries, records of accounts payable, labor distribution records and petty cash records. The contractor shall keep pay administration records to include payroll sheet and registers, tax witholding statements, time cards and payroll checks. The contractor also agrees to keep Procurement and supply records to include store requisitions for material, maintenance work orders equipment use and status reports, expendable property records, purchase orders and production records of quality control and inspections.

3. The contractor agrees that the Purchaser's right under this provision will extend to the authorized representatives of the Comptroller General of the United States, the Law Enforcement Assistance Administration and the State Planning Agency.

4. The compliance with this contract provision does not relieve the contractor from retaining any records that may be required by other laws or regulations for Federal, state or local government units.

EXHIBIT VII

SETTLEMENT OF CONTROVERSIES

Authority of (Purchasing Agency) (Purchasing Agent). Prior to the institution of any action in a court concerning any contract, claim or controversy, the (Purchasing Agency) (Purchasing Agent) is authorized to settle, compromise, pay or otherwise adjust the claim by or against, or controversy with, a contractor relating to a contract entered into by it or by another Purchasing Agency on its behalf, including a claim or controversy initiated after award of a contract, based on breach of contract, mistake, misrepresentation or other cause for contract modification or recision, but excluding any controversy involving penalties or forfeitures prescribed by statute or regulation where another agency is specifically authorized to settle or determine controversy.

COMMENTARY: The words "claims and "controversies" are meant to be broad and all-encompassing. It is intended that they include the full spectrum of potential disagreements from single requests by a governmental authority for a change or correction of contract documents to hotly contested claims of breach.

It is essential that the Procuring Activity have authority to settle all contract claims and controversies. This can avoid unnecessary litigation and often is essential for fair treatment of parties contracting with the State.

On the other hand, some safeguards are needed. The Committee recommends that where and as required, limitations upon the power to settle without outside approval may be established by appropriate regulation.

ACTION ON CONTRACT CLAIMS

This section applies to a claim by or controversy of the State against a contractor or by or of a contractor against the State. If such a claim or controversy is not resolved by mututal agreement, the (Head of the Purchasing Agency) (Purchasing Agent) or his designee shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the contractor, shall state the reasons for the action taken and shall inform the contractor of his right to judicial or administrative relief as provided in this Article. The decision shall be final and conclusive unless fraudulent, or unless the contractor appeals it pursuant to Section 9-404(1) (Appeal and Review of Decision of Contract Appeals Board) or sues pursuant to Section 9-301(1) (Waiver of Sovereign Immunity on Contracts). If the (Head of the Purchasing Agency) (Purchasing Agent) does not issue a written decision within 120 days after receipt of a claim, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received.

COMMENTARY: It is important that administrative action upon claims be expeditious. It also must be recognized that there can be complicated problems which require a considerable time for good faith investigation and negotiation, and that often claimants do not submit adequate documentation in support of their claims.

EXHIBIT VIII

SPECIFICATIONS

SPECIFICATION: Paper, Toilet Tissue (Institutional and Industrial)

KENTUCKY STANDARD NO: 8540-1

1. SCOPE

1.1 This specification covers two (2) types of toilet tissue. Agencies are to supply Supplemental Data to this specification as specified in 6.1

2. 2.1 This specification covers the following types:

Type I - Single-Ply Roll Tissue

Type II - 2 Ply Roll Tissue

3. REQUIREMENTS

3.1 Material - The toilet tissue shall be made from clean pulp; shall be unglazed, soft, clean, non-abrasive, and of even formulation; free from slivers, dirt breaks, wrinkles, holes, and such other imperfections as would affect either appearance or serviceability or both; shall be rectangular without ragged or irregular edges; shall have a maximum of 0 percent ground-wood fiber. Tissue shall be deemed safe for use in septic tanks and must readily break-up in water when agitated. It shall be the manufacturer's first-line product.

3.2 Physical Characteristics, Type I

Type I - Paper, Toilet Tissue, Facial Quality, Single-Ply Roll, White, Sheet Size 4½" x 4½", 1000 Sheets Per Roll, 96 Rolls Per Case, Individually Wrapped, Standard Core.

Roll Construction - Roll tissue shall be evenly and tightly wound on a stiff round paperboard core having an inside diameter of 1-3/8 to 1-3/4 inches, sufficiently rigid to prevent collapse under ordinary conditions of transportation and usage.

Brightness of Paper - Shall be a minimum of 68% (Test Method T452, Federal Specification UU-P556)

3.2 Physical Characteristics, Type I (Continued)

Basis Weight - Shall be a minimum of 11.0 lbs.

Single-Ply Perforation - Tissue roll shall be perforated at not less than 4¼ inch nor more than 4-5/8 inch intervals and shall average not less than 4,500 inches per roll (1000 sheets perforated at 4½ inch intervals or 1,060 sheets perforated at 4¼ inches). No single roll shall be less than 4,375 inches in length.

3.3 Physical Characteristics, Type II

Type II - 2 Ply, Bleached, White, Sheet Size 4½" x 4½", 500 Sheets Per Roll, 96 Rolls Per Case, Individually Wrapped Standard Core.

Roll Construction - Roll tissue shall be evenly and tightly wound on a stiff round paperboard core having an inside diameter of 1-3/8 to 1-3/4 inches, sufficiently rigid to prevent collapse under ordinary conditions of transportation and usage.

Basis Weight - Shall be a minimum of 9.5 lbs.

2 Ply Perforation - Tissue roll shall be perforated at not less than 4-3/8 nor more than 4-5/8 inch intervals and shall average not less than 500 double-ply sheets per roll and no single roll shall contain less than 488 sheets.

Brightness of Paper - Shall be a minimum of 68% (Test Method T452, Federal Specification UU-P-556).

4. SAMPLING, INSPECTION AND TEST PROCEDURES

4.1 Sampling - A sample package shall be furnished for each type asked for in the Invitation to Bid.

4.2 Inspection - As Required

4.3 Testing - Shall be performed by practical application.

5. PREPARATION FOR DELIVERY

5.1 Packaging

5.1.1 Each individual package shall be firmly wrapped to resist deformity in handling.

5.1.2 Shall be packaged and packed according to the manufacturer's practice in a manner acceptable to common carrier for safe transportation to destination as specified.

5.2 Marking - Unless otherwise specified, shipping containers shall be marked with the name of the material, the size, type, and quantity contained therein as defined by the contract or order under which shipment is made, the number of the contract or purchase order.

5.3 Labeling - Shall show product name and address of manufacturer.

6. NOTES

6.1 Supplemental Data - Requisitioning Agency shall specify the following:

Type and Quantity

6.2 Only established branded products that meet or exceed the quality level of the approved brands listed herein shall be considered for inclusion in this Acceptable Brands List.

6.3 Only registered manufacturer's brand names will be considered. Private brands will not be considered.

6.4 Specifications - Additional copies of this specification may be obtained by writing to the Standard and Specifications Section, Division of Purchases, New Capitol Annex, Frankfort, Kentucky 40601.

EXHIBIT IX

"MEMO FOR PROCUREMENT FILE - IFB 72-634"

The award was made to M & B Co., the lowest bidder of those found to be responsive and responsible. Bids were received from the following three contractors:

Ajacks Sales and Supplies
M & B Company
Atlantic Industries

Ajacks Sales and Supplies submitted the lowest price bid but were nonresponsive in that they could not meet the specified delivery schedule for the first ten of the twelve units included in the invitation. The urgency of the requirement was reconfirmed with the originating and approving officials. A resulting delay of deliveries would cause a six-month slippage in the overall program. The cost of such a delay would far outweigh, by a factor of five, the possible advantage of recomputing the procurement to a revised delivery schedule. Therefore, Ajacks Sales and Supplies were notified by the attached letter of rejection of their bid, due to its not being responsive.

The next lowest bidder is Atlantic Industries who were found to be nonresponsible. A pre-award survey, included in the procurement file, revealed a history of poor technical performance in not being able to meet specification requirements on equipment similar to that included in the procurement and of defaulting on three recent contracts. The defaults which have not yet been settled may force Atlantic Industries into bankruptcy. Atlantic Industries was notified of their being adjudged as nonresponsible by a letter included in the procurement file.

The next lowest bidder is M & B Company. They have been found to be responsive and responsible. Since their price was higher than the two competitors which were eliminated, a price analysis was conducted using price quotations received by the states of Oregon and Utah for similar equipment. The analysis is included in the procurement file. M & B Company's price is adjudged to be fair and reasonable as a result of the price analysis. Their bid is responsive and from the records on file and a credit report, M & B Company is a responsible bidder."

EXHIBIT X

JUSTIFICATION FOR A NEW NON-COMPETITIVE PROCUREMENT

"Procurement of maintenance parts and services for 12 off-the-road vehicles of the Elite City police department is proposed on a sole source basis from Elite City Chevrolet. The Elite City Chevrolet Company is the only agency within a radius of fifty miles which stocks parts for the GM four-wheel drive vehicles and can provide responsive routine and emergency maintenance and repair. The next closest agency is sixty-four miles distant.

Based upon an analysis of past experience, use of Elite City Chevrolet services will permit approximately 15% more 'on patrol' time than use of the agency sixty-four miles away. The wilderness area adjacent to Elite City is currently under-patrolled according to the county's planned actions to reduce crime. (The analysis and the county plan are available for review, if required.)

Preliminary discussions with the owner of Elite City Chevrolet resulted in his offering to furnish all parts at the same price as they would be furnished to other repair agencies and that emergency repairs would be given priority in his facility. The contemplated contract covers a period of one year with an option for one additional year. A time and materials type contract is contemplated with a total value including the option of approximately eight thousand dollars. If there is another agency in the area established within the year the option will not be exercised and a competitive procurement will be made."

EXHIBIT XI

JUSTIFICATION FOR TYPE OF CONTRACT

The procurement for fifty transceivers for the city's new police cars is contemplated to be by a formal advertised procurement resulting in a firm fixed-price contract. The transceivers will be bought using the same performance specifications which previously have been used in cities A, B, and C and which resulted in a receipt of several responsive and responsible bids.

EXHIBIT XII

EQUAL OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, age, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places notices to be provided by the Purchasing Agent setting forth the provisions of this Equal Opportunity clause.

2. The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, religion, color, sex or national origin.

3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Purchasing Agent, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Purchaser and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

a. Copy of Contractor SF-100 (Form EEO-1). If the Contractor has 100 or more employees, or if the Contractor has filed Standard Form 100 with the Joint Reporting Committee of the Equal Employment Opportunities Commission, the Contractor shall furnish to the Purchasing Agent with 14 days after award of this contract a copy of the SF-100 most recently filed with the Committee. (This paragraph "a" does not apply where such SF-100 has previously been furnished to the Purchaser or his representative.)

b. Copy of Subcontractor SF-100 (Form EEO-1). The Contractor shall, promptly after award of subcontracts at all tiers, furnish to the Purchasing Agent a copy of SF-100 of all subcontractors whose subcontracts exceed $10,000 and who have 100 or more employees or who have filed SF-100 with the Joint Reporting Committee of the Equal Employment Opportunities Commission, and the Contractor shall include a provision in his subcontracts to effectuate this requirement.

6. In the event of the Contractor's non-compliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further state and local government contracts under grants from the Federal Government in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs, "1" through "7" in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Purchaser may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Purchaser, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT XIII

CLEAN AIR ACT

The contractor and all subcontractors under this contract shall be subject to the provisions of the Clean Air Act, 42 U.S.C. 1857 et. seg., as amended by P. L. 19-604; and Executive Order 11602.

GLOSSARY

Acquisition program--Acquiring of materials by purchases; should encompass planning and scheduling, designing Invitations for Bids, soliciting bids, receiving, opening, and evaluating bids, making awards, expediting, and contract administration.

Alternate bid--A bid submitted in knowing variance from the specifications. Such a bid is only acceptable when the variance is deemed to be immaterial.

Award--The presentation of a purchase agreement or contract to a bidder; the acceptance of a bid or proposal.

Bid--The instrument by which a supplier presents item specifications and prices for a buyer.

Bid and award process-The process of seeking out a product and buying it.

Bid-award file--A file that is divided into commodity and item sections each of which contains listings of who was solicited for individual bids, what each response was, and other information. The bid-award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

Bid bond--An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to sign the contract as bid.

Bid deposit--A sum of money or check, deposited with and at the request of the government, in order to guarantee that the bidder (depositor) will, if selected, sign the contract as bid. If the bidder does not sign the contract, he forfeits the amount of the deposit.

Bidders list--A list maintained by the purchasing authority setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

Brand name specification--A specification that cites a brand name, model number, or some other designation that identifies a specific product as an example of the quality level desired.

Budget data--Information contained in an annual budget submitted by using agencies and approved by management.

Central purchasing authority--The administrative unit in a centralized purchasing system with the authority, responsibility, and control of purchasing activities.

Collusion--A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.

Commodity--An article of trade, a moveable article of value, something that is bought or sold; any moveable or tangible thing that is produced or used as the subject of barter of sale.

Commodity classification groupings--Groupings, each representing a particular function with which a group of products is commonly associated.

Competitive bidding--The offer of prices by individuals or firms competing for a contract, privilege, or right to supply specified services or merchandise.

Competitive negotiation--A technique for purchasing goods and services, usually of a technical nature, whereby qualified suppliers are solicited, negotiations are carried on with each bidder, and the best offer (in terms of performance, quality of items, price, etc.) as judged against proposal evaluation criteria, is accepted; negotiated award.

Conditions of sale--A statement containing conditions of items and list of known defects for something to be sold; makes clear that responsibility for inspection rests upon buyer.

Cost-savings analysis--The process of evaluating the difference between spot purchasing and volume buying.

Design specifications--A purchase specification delineating the essential characteristics that an item bid must possess to be considered for award and so detailed as to describe how the product is to be manufactured.

Disposition--Acting to remove from the premises and control of a using agency goods that are surplus or scrap. Disposition can be accomplished by transferring, selling, or destroying the goods.

Emergency purchase--A purchase made without following the normal purchasing procedure in order to obtain goods or services quickly to meet an emergency.

Emolument--The returns arising from office or employment usually in the form of compensation.

Erroneous bid--A miscalculation in composing a bid resulting in an incorrect price or other term which may affect the bidder's eligibility to be awarded the contract.

Expedite--To hasten or to assure delivery of goods purchased in accordance with a time schedule, usually by contact by the purchaser with the vendor.

Fixed price contract--A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.

Group classification system--A system whereby supplies are grouped with stock numbers assigned to each group and to each item.

Informal bid--An unsealed competitive offer conveyed by letter, telegram, telephone, or other means.

Invitation for Bids--A request, verbal or written, which is made to prospective suppliers requesting the submission of a bid on commodities or services.

Kickbacks--Acts of giving or accepting something of value to influence the award of a contract.

Late bid or proposal--A bid or proposal which is received at the place designated in the Invitation for Bids after the hour established by the invitation as the time by which all bids or proposals must be received.

Letter of complaint--Written procedure for serving complaints against suppliers.

Line item--A procurement item specified in the Invitation for Bids for which the bidder is asked to give individual pricing information and which, under the terms of the invitation, is usually susceptible to a separate contract award.

Lines of authority--In purchasing, the procedure for reviewing approval of Invitations for Bids within an agency-established through state and/or local statutes.

List price--The published price for an item that a vendor uses for informing customers and potential customers.

Malfeasance--Misconduct by a public official.

Management information system--Reporting system showing items and quantities bought in the past.

Market information files--The files on supply sources.

On-hand inventory--Supplies in stock.

Performance specifications--A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.

Prequalification of bidders--The screening of potential vendors in which a government considers such factors as financial capability, reputation, management, etc., in order to develop a list of bidders qualified to bid on government contracts.

Procurement--The process of obtaining goods or services, including all activities from the preparation and processing of a requisition,

through receipt and approval of the final invoice for payments. The acts of preparing specifications, making the purchase, and administering the contract are involved.

Purchase order--A purchaser's document used to formalize a purchase transaction with a vendor. A purchase order, when given to a vendor, should contain statements as to the quantity, description, and price of the goods or services ordered; agreed terms as to payment, discounts, date of performance, transportation terms and all other agreements pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

Purchasing agent--An administrator whose job includes soliciting bids for purchases and making awards of purchase contracts; buyer.

Purchasing official--The administrative official who most directly oversees the activities of purchasing agents and those other aspects of property management that are joined as separate or subordinate sections under individual administrative control.

Purchasing manual--A formal collection of instructions relative to procedures to be followed by all parties when making use of or dealing with the purchasing department in procurement actions.

Qualified bidder--A bidder determined by the government to meet minimum set standards of business competence, reputation, financial ability, and product quality for placement on the bidders list.

Regional bidding--A bidding process whereby deliveries are made to widely scattered points or the requirements are of a local nature. In such a process, the bidders list is divided into needing geographic regions.

Request for proposal(RFP)--A request for a bid on commodities or services which is made to prospective buyers in competitive negotiation.

Rotational bidding--Invitations to bidders which are sent out on a rotational basis; each bidder gets a bid over a period of time.

Scheduled buying--A purchase for which a bid opening date is prescheduled so that using agencies' requirements for the period covered by the contract can be gathered and combined for the Invitation for Bids.

Sealed bid--A bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids; usually required by the purchasing authority on major procurements to ensure fair competition among bidders.

Single-source procurement--An award for a commodity which can only be purchased from one supplier, usually because of its technological, specialized, or unique character.

Spot purchase--A one-time purchase made in the open market out of necessity or to take advantage of a bargain price.

Standard application form--A form that includes financial standing and responsibilities, facilities for production, distribution and service, and length of time successfully in business; used to pre-qualify bidders.

Standard specification--A specification established through a standardization process to be used for all or most purchases of the item involved.

Stock bin card--Card attached to bin which includes columns for receipts, issues, remaining balance, and date.

Surplus property--Inventory not required by one using agency or any using agencies at the present time or in the foreseeable future.

Tabulation of bids--The recording of bids and bidding data that was submitted in response to a specific invitation for the purpose of comparison, analysis, and record-keeping.

Term contracting--A technique in which a source or sources of supply are established for a specified period of time, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

Testing--A phase of inspection involving the determination by technical means of the physical and chemical properties of items or compounds thereof, requiring not so much the element of personal judgement as the application of recognized and established scientific principles and procedures.

Using agency--A unit of government that requisitions items through central purchasing.

Vendor buying--Purchasing in large quantities in order to reduce the price per unit; volume purchasing.

Want list--A list of what items using agencies need but cannot afford within their own budget.

Warehousing--The process whereby repetitive use and surplus items are received, stored, and disbursed from a central geographic location.

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ADVISORY MANUAL

POST TEST

The attached questions directly relate to the information contained in the Advisory Manual you have just completed. Please answer each question to the best of your ability by checking the correct answer.

You can check your answers with the answer sheet in the Appendix.

ADVISORY EVALUATION QUESTIONS

1. Check which of the following items are most often required in procurement contracts. (Check 5)

_____Time of payment
_____Bid bond
_____Bidding requirements
_____Use of patents
_____Documentation required
_____Termination of contract
_____Damages on default

2. Check which of the following items are generally included in the statement of work for a procurement contract. (Check 4)

_____Specification of the tasks, materials and/or services to be procured
_____Method of payment
_____Delivery schedule
_____Statement of method used in contractor selection
_____List of appropriate contract sources
_____Quantities to be provided
_____Checkpoints for accomplishment

3. Check which of the following statements you believe is more applicable to a Statement of Work.

_____A clear, comprehensive, complete, and legally correct statement of the results to be achieved by contractors ensures that the objectives are attained.

_____Man-hour estimates for each task by discipline and skill levels, coupled with prevailing labor rates, other direct costs that are believed to be necessary, indirect costs and fees may be applied to derive an aggregate estimated total contract cost.

4. Check the following *types* of contracts which are applicable to procurement. (Check 4)

_____Fixed price contract
_____Cost reimbursement contract
_____Time and materials and labor-hour contract
_____Indefinite delivery contract
_____Letter contract

5. Check the *forms* of contract most often used in procurement. (Check 3)

_____Purchase order
_____Fixed price
_____Letter contract
_____Definitive or expressed contract

6. Check the most common methods of selecting contractors. (Check 3)

_____a. Non-competitive negotiations
_____b. Political affiliation
_____c. Geographic location
_____d. Advertisement-sealed bids
_____e. Competitive negotiations

7. Which of the methods listed in Question 6

_____Obtains the lowest price?
_____Obtains the fastest service?
_____Is the easiest to defend if challenged?

8. Indicate who has the responsibility for each of the following tasks: the attorney (A), the purchasing agent (P), or the manager (M).

_____Drafting procurement contract clauses
_____Writing specifications
_____Making final approval on contract awards
_____Choosing the contract form
_____Establishing and maintaining a bidders list

9. Arrange the following steps of selecting a contractor in the order most effective.

_____Prepare a statement of work
_____Determine kind of specifications to be used
_____Draft invitation to bid
_____Ascertain the dollar amount of the contract
_____Place advertisement in newspaper
_____Award contract
_____Open bids
_____Prepare contract
_____Execute contract
_____Receive bid bond

10. Check the actions necessary to establish a local centralized purchasing agency between a county and the major city in the county. (Check 2)

_____Insure enabling state legislation
_____Execute an interlocal agreement
_____Obtain approval by a state official
_____Have both the city and county enact an ordinance
_____Employ a director

11. Check the dollar amount you believe to be the most appropriate threshold below which small purchases procedures apply.

_____None
_____$500
_____$2,500
_____$5,000
_____$10,000

12. Which of the following items require documentation when competitive negotiation is used? (Check 4)

_____Adequacy of competition
_____Reasonableness of cost
_____Responsibleness of contractors
_____Need for patented equipment
_____Memorandum of negotiations
_____Existence of emergency

13. Which is the most effective and appropriate method for resolving disputes between the contractor and the procuring authority?

_____Court of law
_____Special court for procurement contracts
_____Commercial arbitration
_____Decision by purchasing agent with review by court
_____Special Arbitration Tribunal

14. In your opinion, local procurement activities would benefit most from: (arrange in descending order of benefit)

_____A uniform procurement code adopted by all states
_____A model code which states and localities within any state could use selectively
_____No state restriction or requirements on localities
_____Present state and local law

ANSWERS TO

ADVISORY EVALUATION QUESTIONS

1. Check which of the following items are most often required in procurement contracts. (Check 5)

- ✓ Time of payment
- ✓ Bid bond
- ___ Bidding requirements
- ✓ Use of patents
- ___ Documentation required
- ✓ Termination of contract
- ✓ Damages on default

2. Check which of the following items are generally included in the statement of work for a procurement contract. (Check 4)

- ✓ Specification of the tasks, materials and/or services to be procured
- ___ Method of payment
- ✓ Delivery schedule
- ___ Statement of method used in contractor selection
- ___ List of appropriate contract sources
- ✓ Quantities to be provided
- ✓ Checkpoints for accomplishment

3. Check which of the following statements you believe is more applicable to a Statement of Work.

- ✓ A clear, comprehensive, complete, and legally correct statement of the results to be achieved by contractors ensures that the objectives are attained.

- ___ Man-hour estimates for each task by discipline and skill levels, coupled with prevailing labor rates, other direct costs that are believed to be necessary, indirect costs and fees may be applied to derive an aggregate estimated total contract cost.

4. Check the following *types* of contracts which are applicable to procurement. (Check 4)

- ✓ Fixed price contract
- ✓ Cost reimbursement contract
- ✓ Time and materials and labor-hour contract
- ___ Indefinite delivery contract
- ___ Letter contract

5. Check the *forms* of contract most often used in procurement. (Check 3)

- ✓ Purchase order
- ___ Fixed price
- ✓ Letter contract
- ✓ Definitive or expressed contract

6. Check the most common methods of selecting contractors. (Check 3)

- ✓ a. Non-competitive negotiations
- ___ b. Political affiliation
- ___ c. Geographic location
- ✓ d. Advertisement-sealed bids
- ✓ e. Competitive negotiations

7. Which of the methods listed in Question 6

- e Obtains the lowest price?
- e Obtains the fastest service?
- d Is the easiest to defend if challenged?

8. Indicate who has the responsibility for each of the following tasks: the attorney (A), the purchasing agent (P), or the manager (M).

- A Drafting procurement contract clauses
- P Writing specifications
- M Making final approval on contract awards
- A Choosing the contract form
- P Establishing and maintaining a bidders list

9. Arrange the following steps of selecting a contractor in the order most effective.

- 2 Prepare a statement of work
- 1 Determine kind of specifications to be used
- 4 Draft invitation to bid
- 3 Ascertain the dollar amount of the contract
- 5 Place advertisement in newspaper
- 7 Award contract
- 6 Open bids
- 8 Prepare contract
- 9 Execute contract
- 10 Receive bid bond

10. Check the actions necessary to establish a local centralized purchasing agency between a county and the major city in the county. (Check 2)

____ Insure enabling state legislation
__✓_ Execute an interlocal agreement
____ Obtain approval by a state official
__✓_ Have both the city and county enact an ordinance
____ Employ a director

11. Check the dollar amount you believe to be the most appropriate threshold below which small purchases procedures apply.

____ None
____ $500
__✓_ $2,500
____ $5,000
____ $10,000

12. Which of the following items require documentation when competitive negotiation is used? (Check 4)

__✓_ Adequacy of competition
__✓_ Reasonableness of cost
__✓_ Responsibleness of contractors
____ Need for patented equipment
__✓_ Memorandum of negotiations
____ Existence of emergency

13. Which is the most effective and appropriate method for resolving disputes between the contractor and the procuring authority?

____ Court of law
____ Special court for procurement contracts
____ Commercial arbitration
__✓_ Decision by purchasing agent with review by court
____ Special Arbitration Tribunal

14. In your opinion, local procurement activities would benefit most from: (arrange in descending order of benefit)

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4 No state restriction or requirements on localities
3 Present state and local law